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Idaho (Ter.) Laws, statutes, etc.  
Laws of the Territory of Idaho.

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1880























*Idaho Territory, 1881*

**GENERAL LAWS**

OF THE

**TERRITORY OF IDAHO**

INCLUDING THE

**CODE OF CIVIL PROCEDURE,**

PASSED AT THE

**ELEVENTH SESSION**

OF THE

**TERRITORIAL LEGISLATURE,**

CONVENED ON THE

**THIRTEENTH DAY OF DECEMBER, A. D. 1880, AND ADJOURNED ON  
THE TENTH DAY OF FEBRUARY, A. D. 1881,**

AT

**BOISE CITY.**

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**Published by Authority.**

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**A. J. BOYAKIN, TERRITORIAL PRINTER.  
1881.**

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# **CERTIFICATE.**

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## **EXECUTIVE DEPARTMENT, TERRITORY OF IDAHO, OFFICE OF THE TERRITORIAL SECRETARY.**

I, **THEODORE F. SINGISER**, Secretary of the Territory of Idaho, do hereby certify that the Laws, Acts, and Resolutions, contained and printed in the within volume, are true and literal copies of all the enrolled Laws, Acts, and Resolutions, passed at the Eleventh Session of the Legislative Assembly of the Territory of Idaho, convened on the thirteenth day of December, A. D. 1880, and adjourned on the tenth day of February, A. D. 1881.

In witness whereof, I have hereunto set my hand, and caused the Great Seal of the Territory to be affixed.

Done at Boise City, this 14th day of March, A. D. 1881.

**THEODORE F. SINGISER,**  
Secretary of Idaho.





GENERAL LAWS  
OF THE  
TERRITORY OF IDAHO.  
CODE OF CIVIL PROCEDURE.

---

AN ACT  
TO ESTABLISH A CODE OF CIVIL PROCEDURE FOR  
IDAHO TERRITORY.

---

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

PRELIMINARY PROVISIONS.

SECTION 1. This act takes effect at twelve o'clock, noon, on the twenty-first day of May, eighteen hundred and eighty-one, and shall be known and may be cited as the Code of Civil Procedure. When act takes effect.

SEC. 2. No part of it is retroactive, unless expressly so declared.

SEC. 3. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates, and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice. Not retroactive. How construed.

SEC. 4. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. Construed as continuations.

SEC. 5. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by Actions, etc., not affected by this Code.

Actions, etc.,  
not affected by  
this Code.

Limitations  
shall continue  
to run.

Holidays.

Computation  
of time.

Certain acts  
not to be done  
on holidays.

"Seal" de-  
fined.

Joint au-  
thority.

Words and  
phrases.

Terms de-  
fined.

its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable.

SEC. 6. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code.

SEC. 7. Holidays, within the meaning of this Code, are: every Sunday, the first day of January, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the Territory, and every day appointed by the President of the United States, or by the Governor of this Territory, for a public fast, thanksgiving or holiday.

SEC. 8. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

SEC. 9. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

SEC. 10. When the seal of a Court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

SEC. 11. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.

SEC. 12. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

SEC. 13. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes print-

ing; oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. Terms defined.

The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes both real and personal property; Property defined.
2. The words "real property" are co-extensive with lands, tenements and hereditaments, possessory rights and claims; Real property.
3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt; Personal property.
4. The word "month" means a calendar month, unless otherwise expressed; Month.
5. The word "will" includes codicils; WILL
6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a Court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings. Writ.
7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories. State.

SEC. 14. No statute, law, or rule is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws, and rules heretofore in force in this Territory, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided; nor does it affect any private statute not expressly repealed. Statutes, etc., inconsistent with Code repealed.

SEC. 15. This Act, whenever cited, enumerated, referred to, or amended, may be designated simply as "THE CODE OF CIVIL PROCEDURE," adding, when necessary, the number of the section. This Act, how cited, enumerated, etc.

SEC. 16. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other. Civil and criminal remedies not merged.

## CHAPTER I.

## COURTS OF JUSTICE IN GENERAL.

SECTION 17. The several Courts of this Territory.

18. Courts of Record.

The Courts.

SECTION 17. The following are the Courts of justice of this Territory:

1. The Supreme Court;
2. The District Courts;
3. The Probate Courts;
4. The Justices' Courts.

Courts of Record.

SEC. 18. The Courts enumerated in the first three subdivisions of the preceding Section are Courts of record.

## CHAPTER II.

## OF THE SUPREME COURT.

SECTION 19. Jurisdiction of two kinds.

20. Original jurisdiction.

21. Appellate jurisdiction.

22. May reverse, affirm, or modify, etc., remittitur.

23. Number of Judges necessary for the transaction of business.

24. Number to pronounce judgment.

25. Terms, when held. Additional terms.

Jurisdiction.

SECTION 19. The jurisdiction of this Court is of two kinds:

1. Original; and
2. Appellate.

Original jurisdiction.

SEC. 20. Its original jurisdiction extends to the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its appellate jurisdiction.

Appellate jurisdiction.

SEC. 21. Its appellate jurisdiction extends to a review of all cases removed to it under such regulations as are or may be prescribed by law, from the final decisions of the District Courts.

May reverse, affirm, or modify, etc., remittitur.

SEC. 22. The Court may reverse, affirm, or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a

new trial or further proceedings to be had. Its judgment must be remitted to the Court from which the appeal was taken. May reverse, affirm, or modify, etc., remittitur.

The decisions of the Court shall be given in writing ; and in giving a decision, if a new trial be granted, the Court shall pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case. Decisions in writing.

SEC. 23. The presence of two justices is necessary for the transaction of business, but one of the justices may adjourn the Court from day to day with the same effect as if all were present. Presence of two justices.

SEC. 24. The concurrence of two justices is necessary to pronounce a judgment ; if two do not concur, the case must be re-heard. Concurrence of two justices.

SEC. 25. There must be at least one term in each year for the hearing of causes, to be held at the Capital of the territory, at such time as the Court may by rule, or order, designate. Additional terms may also be held by order of the Court. Terms of the Supreme Court.

## CHAPTER III.

### OF THE DISTRICT COURTS.

#### SECTION 26. Jurisdiction.

27. Duration of terms.

28. Adjournment of the Court.

29. Judgments may be entered in vacation.

SECTION 26. The jurisdiction of the District Courts extends :

1. To all civil actions for relief formerly given in Courts of Equity;

2. To all civil actions in which the subject of litigation is not capable of pecuniary estimation;

3. To all civil actions in which the subject of litigation is capable of pecuniary estimation, which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, or the value of the property in controversy exceeds one hundred dollars;

4. To all special proceedings;

5. To the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its powers;

6. To the trial of all indictments;

7. Its appellate jurisdiction extends to all cases arising in Probate or Justices Courts; and to all other matters and cases wherein an appeal is allowed by law.

Duration of term.

SEC. 27. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

Adjournments.

SEC. 28. The Court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Judgments and orders entered in vacation.

SEC. 29. Judgments and orders of this Court may be entered either in term or vacation.

## CHAPTER IV.

### OF THE PROBATE COURT.

SECTION 30. Court in each county.

31. Jurisdiction of.

32. Presumptions in favor of its judgments.

33. Terms of the Court in the respective counties.

34. Terms, where held. Shall have a Clerk.

Court in each county.

SECTION 30. There must be a Probate Court held in each of the counties.

Jurisdiction of Probate Court.

SEC. 31. The Probate Court has jurisdiction :

1. To open and receive proof of last wills and testaments, and to admit them to proof ;

2. To grant letters testamentary, of administration and of guardianship, and to revoke the same;

3. To appoint appraisers of estates of deceased persons;

4. To compel executors, administrators, and guardians to render accounts;

5. To order the sale of property of estates, or belonging to minors;

6. To order the payment of debts due from estates;

7. To order and regulate all distributions of property or estates of deceased persons;

8. To compel the attendance of witnesses, and the production of title deeds, papers, and other property of an estate, or of a minor;

9. To make such orders as may be necessary to the exercise of the powers conferred upon it.

10. In addition to their probate jurisdiction; to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred



dollars, exclusive of interest, and concurrent jurisdiction with Justices of the Peace in criminal cases.

SEC. 32. The proceedings of this Court are construed in the same manner, and with like intendments, as the proceedings of Courts of general jurisdiction, and to its records, orders, judgments, and decrees there is accorded like force, effect, and legal presumptions as to the records, orders, judgments, and decrees of District Courts. Presumptions as to probate proceedings.

*Provided*, that this section shall be applicable to its probate proceedings, records, orders, judgments and decrees, only.

SEC. 33. The terms of the Probate Courts in the several counties, for the transaction of all probate business except that specially authorized by law to be done in vacation, must be held on the fourth Monday in each month. For the transaction of all civil, other than probate business, and all criminal business, these Courts are always open. Terms in the several counties.

SEC. 34. The terms of the Probate Court must be held at the county seats. Terms where held.

There shall be a Clerk of said Court to be appointed by the judge thereof; or the Probate Judge may act as Clerk of his own Court. Every Probate Judge shall be responsible upon his official bond, for every default or misconduct in office of his Clerk. Clerk.

## CHAPTER V.

### OF JUSTICES' COURTS.

SECTION 35. Justices of the Peace must hold.

36. Civil jurisdiction.

37. Civil jurisdiction restricted.

38. Territorial extent of civil jurisdiction.

39. Criminal jurisdiction.

SECTION 35. Every Justice of the Peace must hold a Justice's Court in the precinct or city for which he is elected or appointed. Justice must hold Court where.

SEC. 36. The civil jurisdiction of these Courts within their respective precincts or cities extends: Civil jurisdiction.

1. To an action arising on contract, for the recovery of money only, if the sum claimed does not exceed one hundred dollars;

2. To an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real prop-

erty, where no issue is raised by the answer involving the plaintiff's title, or possession of the same, if the damages claimed do not exceed one hundred dollars;

3. To an action for a fine, penalty, or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city;

4. To an action upon a bond or undertaking conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceed that sum; the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due;

5. To an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars;

6. To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed one hundred dollars.

Jurisdiction  
restricted.

SEC. 37. The jurisdiction conferred by the last section shall not extend, however:

To a civil action in which the title or possession of property is put in issue.

Jurisdiction  
extends to  
County.

SEC. 38. Mesne and final process of Justices' Courts may be issued to any part of the county in which they are held.

Criminal juris-  
diction.

SEC. 39. These Courts have jurisdiction of the following public offenses, committed within the respective counties in which such Courts are established:

1. Petit larceny;

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties;

3. Breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

## CHAPTER VI.

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## GENERAL PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

**SECTION 40. Sittings public.**

41. Limitation on preceding section.
42. Powers of court respecting the conduct of judicial proceedings.
43. Courts of record may make rules.
44. When rules take effect.
45. Days on which Courts, etc., may be held.
46. Days on which Courts shall not be opened.
47. Court appointed, etc., for those days, deemed for next day.
48. Adjournment of Court for absence of Judge.
49. Same.
50. Judge may, in certain cases, change place of holding Court.
51. Parties to appear at place appointed.
52. Rooms, etc., when Judge may order.
53. What Courts have seals.
54. Seals, by whom kept.
55. To what proceedings to be affixed.
56. Places of residence of Judges.
57. District Judges may hold Courts in another district.
58. Powers of District Judges at chambers.
59. When disqualified.
60. Not to act as attorney in his own Court.
61. Certain Judges not to act as attorneys.
62. No judicial officer to have a partner.
63. General powers of Judges out of Court.
64. Powers of judicial officers as to conduct of proceedings before them.
65. Same.
66. Same.
67. Subsequent applications for orders, when prohibited.
68. Violation of last section.
69. No proceeding affected by a vacancy in office of Judge, etc.
70. Proceedings to be in the English language.
71. Abbreviations and figures.
72. Means to be used to execute judicial powers in certain cases.

**SECTION 40.** The sittings of every Court of justice are public, except as provided in the next section.

**SEC. 41.** In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the Court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the Court, the parties, their witnesses, and counsel; *provided*, that in any cause the Court may, in the exercise of a sound discretion, during the examination of a witness, exclude any and all other witnesses in the cause.

**SEC. 42.** Every Court has power :

1. To preserve and enforce order in its immediate presence ;

Limitations  
on preceding  
section.

Powers of  
Court respect-  
ing the conduct  
of judicial pro-  
ceedings.

Same.

2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

3. To provide for the orderly conduct of proceedings before it or its officers;

4. To compel obedience to its judgments, orders, and process, and to the orders of a Judge out of Court in an action or proceeding pending therein;

5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner appertaining thereto;

6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code;

7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;

8. To amend and control its process and orders, so as to make them conformable to law and justice.

Courts of record may make rules.

SEC. 43. Every Court of record may make rules, not inconsistent with the laws of this Territory, for its own government and the government of its officers; but such rules must neither impose a tax or charge upon any legal proceeding nor give an allowance to any officer for services.

When rules take effect.

SEC. 44. The rules adopted by the Supreme Court take effect sixty days, and those adopted by other Courts, thirty days, after their publication.

Days on which Courts, etc., may be held.

SEC. 45. The Courts of Justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Days on which Courts shall not be opened.

SEC. 46. No Court can be opened, nor can any judicial business be transacted, on Sunday, on the first day of January, on the fourth of July, on Christmas or Thanksgiving day, or on a day on which the general election is held, except for the following purposes:

1. To give, upon their request, instructions to a jury when deliberating on their verdict;

2. To receive a verdict or discharge a jury;

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; *provided*, that in civil causes orders of arrest may be made and executed; writs of attachment, executions, injunctions and writs of prohibition, may be issued and served; proceedings to recover possession of personal property may be had; and suits for the purpose of ob-

Exception.

taining any such writs and proceedings may be instituted on any day.

SEC. 47. If any of the days mentioned in the last section happen to be the day appointed for the holding of a Court, or to which it is adjourned, it is deemed appointed for or adjourned to the next day. Court appointed, etc., for those days, deemed for next day.

SEC. 48. If no Judge attend on the day appointed for holding the Court, or on the day to which it may have been adjourned, before noon, the Sheriff or Clerk must adjourn the Court until the next day at ten o'clock A. M.; and if no Judge attend on that day, before noon, the Sheriff or Clerk must adjourn the Court until the following day, at the same hour, and so on from day to day, for one week, unless the Judge, by written order, directs it to be adjourned to some day certain fixed in said order, in which case it shall be so adjourned. Adjournment of Court for absence of Judge.

SEC. 49. If no Judge attend for one week, and no written order is made, as provided in the last section, the Sheriff or Clerk shall adjourn the session until the time appointed for the holding of the next regular session. Same.

SEC. 50. A Judge authorized to hold or preside at a Court appointed to be held in a county, city, or town, may, by an order filed with the Clerk, and published as he may prescribe, direct that the Court be held or continued at any other place in the city, town, or county than that appointed, when war, insurrection, pestilence, or other public calamity, or the dangers thereof, or the destruction or danger of the building appointed for holding the Court, may render it necessary; and may, in the same manner, revoke the order, and, in his discretion, appoint another place in the same city, town, or county, for holding the Court. Judge may in certain cases, change place of holding Court.

SEC. 51. When the Court is held at a place appointed as provided in the last section, every person held to appear at the Court must appear at the place so appointed. Parties to appear at place appointed.

SEC. 52. If suitable rooms for holding the District Courts, and the chambers of the Judges of such Courts, be not provided in any county by the commissioners thereof, together with attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the Courts may direct the Sheriff of such county to provide such rooms, attendants, furniture, fuel, lights, and stationery, and the expenses thereof are a charge against such county. Rooms, etc., when Judge may order.

SEC. 53. Each of the following Courts has a seal: What Courts have seals.

1. The Supreme Court;
2. The District Courts;
3. The Probate Courts.

Seals, by whom kept.

SEC. 54. The Clerk of the Court must keep the seal thereof.

Seal of court, to what proceedings affixed.

SEC. 55. The seal of the Court need not be affixed to any proceeding therein, or document, except :

1. To a writ ;

2. To the certificate of the probate of a will, or of the appointment of an executor, administrator, or guardian ;

3. To the authentication of a copy of a record or other proceeding of a Court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

Residence of Probate Judge and Justice.

SEC. 56. Each Probate Judge shall reside at the county seat of his county, and every Justice of the Peace shall reside in the precinct in which his Court is held.

District Judges may hold Courts in another district.

SEC. 57. A District Judge may hold a Court in any county in this Territory, upon the request of the Judge of the district in which such Court is to be held; and when, by reason of sickness or absence from the Territory, or from any other cause, a Court cannot be held in any county in a district by the Judge thereof, a certificate of that fact must be transmitted by the Clerk to the Governor, who may thereupon direct some other District Judge to hold such Court.

Powers of District Judges at chambers.

SEC. 58. District Judges, at chambers, may grant all orders and writs which are usually granted in the first instance upon ex-parte applications, and may, at chambers, hear and dispose of such writs and of motions for new trials, and try and determine writs of review, mandate and prohibitions, and may hear applications to discharge all such orders and writs. In case of vacancy in the office of any District Judge, or his absence from the Territory, motions may be made before and orders granted by any other District Judge.

When disqualified.

SEC. 59. A Judge cannot act as such in any of the following cases:

1. In an action or proceeding to which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding;

But this section does not apply to the arrangement of the calendar or the regulation of the order of business, nor to the power of transferring the cause to another county.

Not to act as attorney in his own Court.

SEC. 60. A Judge cannot act as attorney or counsel in a Court in which he is Judge, or in an action or proceeding removed therefrom to another Court for trial or



review, or in an action or proceeding from which an appeal may lie to his own Court.

SEC. 61. A Justice of the Supreme Court, or Judge of the District Court, cannot act as attorney or counsel in any Court, except in an action or proceeding to which he is a party on the record. Certain Judges not to act as attorneys.

SEC. 62. No Judge or other judicial officer, shall have a partner acting as attorney or counsel in any Court of this Territory. No judicial officer to have a partner.

SEC. 63. A Judge may exercise, out of Court, all the powers expressly conferred upon a Judge, as contra-distinguished from the Court. General powers of Judges out of Court.

SEC. 64. Every judicial officer has power:

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of an official duty; Powers of judicial officers as to conduct proceedings before them.

2. To compel obedience to his lawful orders, as provided in this Code;

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code;

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and duties.

SEC. 65. For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt, in the cases provided in this Code. Same.

SEC. 66. The Justices of the Supreme Court, and the Judges of the District Courts, have power in any part of the Territory, and Probate Judges and Justices of the Peace within their respective counties, to take and certify: Same.

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument;

2. The acknowledgment of a satisfaction of a judgment of any Court;

3. An affidavit or deposition to be used in this Territory.

SEC. 67. If an application for an order, made to a Judge of a Court in which the action or proceeding is pending, is refused, in whole or in part, or is granted conditionally, no subsequent application for the same order can be made to any other Judge, except of a higher Court; but nothing in this section applies to motions refused for any informality in the papers or proceedings necessary to obtain the order, or to motions refused, with liberty to renew the same. Subsequent applications for orders, when prohibited.

Violation  
of last section.

SEC. 68. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of the Court in which the action or proceeding is pending.

No proceeding af-  
fected by a  
vacancy in  
office of  
Judge, etc.

SEC. 69. No proceeding in any Court of justice, in an action or special proceeding pending therein, is affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

Proceedings to  
be in the  
English lan-  
guage.

SEC. 70. Every written proceeding in a Court of justice in this Territory shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.

Abbreviations  
and figures.

SEC. 71. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Means to be  
used to execute  
judicial  
powers in cer-  
tain cases.

SEC. 72. When jurisdiction is, by this Code or by any other statute, conferred on a Court or judicial officer, all the means *necessary* to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by this Code *or the statute*, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.

## CHAPTER VII.

### OF JURORS.

- SECTION 73. Jury defined.
74. Different kinds of juries.
75. Grand Jury defined.
76. Trial jury defined.
77. Number of a trial jury.
78. Jury of inquest defined.
79. Who are competent to act as jurors.
80. Who are not competent to act as jurors.
81. Who are exempt.
82. Who may be excused.
83. Exempt juror may file affidavit.
84. List of persons to serve as jurors to be made by Commissioners.
85. How selection shall be made.
86. List to be placed with Clerk.
87. Duty of Clerk on receiving lists.
88. Regular jurors to serve one year.
89. Jury to be drawn upon the order of the Judge.
90. Clerk to notify County Judge and Sheriff of time of drawing.
91. Sheriff and Judge to witness drawing.
92. Drawing, when to be adjourned.
93. Shall proceed, when.

94. Drawing, how conducted.
95. After adjournment of Court, disposition to be made of ballots.
96. Copy of list to be furnished by Clerk.
97. Sheriff to summon jurors, how.
98. Court may order jury drawn, when.
99. When jury may be completed from the body of the county, or by-standers.
100. Jurors for Probate and Justices' Courts, by whom summoned.
101. How summoned.
102. Officer's return.
103. Manner of summoning juries of inquest.
104. Obedience to summons, how enforced.
105. Grand Jury, when to be impaneled.
106. Grand Jury, how constituted.
107. Jury to be impaneled as prescribed by law.
108. Names of trial jurors, how kept.
109. Trial juries, how impaneled.
110. Empanelling jury in Justices' Courts.
111. In criminal cases.
112. Juries of inquest, how impaneled.

**SECTION 73.** A jury is a body of men temporarily select- Jury defined.  
ed from the citizens of a particular district, and invested  
with power to present or indict a person for a public  
offense, or to try a question of fact.

**SEC. 74.** Juries are of three kinds:

Different kinds  
of juries

1. Grand juries;
2. Trial juries;
3. Juries of inquest.

**SEC. 75.** A Grand Jury is a body of men, sixteen in Grand jury  
defined.  
number, returned in pursuance of law from citizens of  
the county, before a Court of competent jurisdiction, and  
sworn to inquire of public offenses committed or triable  
within the county.

**SEC. 76.** A trial jury is a body of men returned Trial jury  
defined.  
from the citizens of a particular district, before a  
Court or officer of competent jurisdiction, and sworn  
to try and determine, by a unanimous verdict, a ques-  
tion of fact.

**SEC. 77.** A trial jury in the District consists of Number of a  
trial jury.  
twelve, and in the Probate and Justices' Courts of six  
men, unless the parties to the action or proceeding agree  
upon a less number.

**SEC. 78.** A jury of inquest is a body of men, sum- Jury of In-  
quest defined.  
moned from the citizens of a particular district, before  
the Sheriff, Coroner, or other ministerial officer, to  
inquire of particular facts.

**SEC. 79.** A person is competent to act as a juror if Who are com-  
petent to act  
as jurors.  
he be:

1. A citizen of the United States, and an elector of  
the county;

2. In possession of his natural faculties and not decrepit;

3. Possessed of sufficient knowledge of the language in which the proceedings of the Courts are had.

Who are not  
competent to  
act as jurors.

SEC. 80. A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of a felony or misdemeanor, involving moral turpitude.

Who are  
exempt.

SEC. 81. A person is exempt from liability to act as a juror if he be:

1. A judicial, civil, or military officer of the United States, or of the Territory of Idaho;

2. A person holding a county office;

3. An attorney and counselor at law;

4. A minister of the gospel or a priest of any denomination;

5. A teacher in a college, academy, or school;

6. A practicing physician;

7. An officer, keeper, or attendant of an almshouse, hospital, asylum, or other charitable institution;

8. Engaged in the performance of duty as officer or attendant of a County Jail or the Territorial Prison;

9. An express agent, mail carrier, telegraph operator, or keeper of a public ferry or toll gate;

10. A dispensing druggist of a prescription drug-store;

11. A superintendent, engineer, conductor, fireman, or station agent of a railroad;

12. A person drawn as a juror in the District Court, and who has served as such within a year; but this exemption shall not apply to a person who is summoned on a special *venire*, or to serve as a juror in the Probate or Justice's Court.

Who may be  
excused.

SEC. 82. A juror cannot be excused by the Court for slight or trivial cause, or for hardship, or inconvenience to his business, but only when material injury or destruction to his property, or that of the public intrusted to him, is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence.

May transmit  
affidavit of ex-  
cuse.

SEC. 83. If a person exempt from liability to act as a juror, as provided in section eighty-one, be summoned as a juror, he may make and transmit his affidavit to the Clerk of the Court for which he is summoned, stating his office, occupation or employment; and such affidavit shall be delivered, by the Clerk, to the

Judge of the Court when the name of such person is called, and, if sufficient in substance, it shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the Clerk.

SEC. 84. The Board of Commissioners of each county must, at their first regular meeting in each year, or at any other meeting if neglected at the first, make a list of persons to serve as jurors in the District Court of the county, for the ensuing year. List of persons to serve.

SEC. 85. They must proceed to select and list from the poll lists of the several precincts in their respective counties, last returned to the Clerk of their Board, the names of one hundred and fifty persons competent to serve as jurors; and in making such selection, they must take the names of such only as are exempt from serving, who are in possession of their natural faculties, and not infirm or decrepit, of fair character, of approved integrity, and of sound judgment; *provided*, that if, in any of the counties, the county commissioners shall not be able to select the number required by this section, for jurors, they may select a less number, and the highest possible. How selection made.

SEC. 86. Certified lists of the persons selected to serve as jurors must at once be placed in the possession of the Clerk of the District Court. List to be placed with Clerk.

SEC. 87. On receiving such lists, the Clerk must file the same in his office, and write down the names contained therein on separate pieces of paper, of the same size and appearance, and fold each piece so as to conceal the name thereon, and deposit them in a box to be called the "jury box." Duty of Clerk on receiving lists.

SEC. 88. The persons whose names are so returned are known as regular jurors, and must serve for one year, and until other persons are selected and returned. Regular jurors to serve one year.

SEC. 89. Not less than fifteen nor more than thirty days before the commencement of any term of the District Court, the Judge thereof, if a jury will be required therefor, must make and file with the Clerk an order that one be drawn. The number to be drawn must be fixed in the order; if to form a Grand Jury, it must be twenty, and if a trial jury, such number as the Judge may direct. Jury to be drawn upon the order of the Judge.

SEC. 90. At least one day before the drawing, the Clerk must notify the Sheriff and Probate Judge of the time when such drawing will take place, which time must not be more than three days after the receipt by him of the order for such drawing. Clerk to notify Judge and Sheriff of time of drawing.

SEC. 91. At the time so appointed, the Sheriff, in person or by deputy, and the Probate Judge, must attend Sheriff and Judge to witness drawing.

at the Clerk's office to witness such drawing, and if they do so, the Clerk must, in their presence, proceed to draw the jurors.

Drawing when  
to be ad-  
journd

SEC. 92. If the officers so notified do not appear, the Clerk must adjourn the drawing until the next day, and, by written notice, require two electors of the county to attend such drawing on the adjourned day.

Shall proceed,  
when.

SEC. 93. If, at the adjourned day, the Sheriff, Probate Judge, and electors, or any two of such persons, appear, the Clerk must in their presence proceed to draw the jurors.

Drawing, how  
conducted.

SEC. 94. The Clerk must conduct such drawing as follows :

1. He must shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written, as much as possible ;

2. He must then publicly draw out of the box as many such slips of paper as are ordered by the Judge;

3. A minute of the drawing must be kept by one of the attending officers, in which must be entered the name contained on every slip of paper so drawn, before any other slip is drawn;

4. If, after drawing the whole number required, the name of any person has been drawn who is dead or insane, or who has permanently removed from the county, to the knowledge of the Clerk or any other attending officer, an entry of such fact must be made in the minute of the drawing, and the slip of paper containing such name must be destroyed;

5. Another name must then be drawn, in place of that contained on the slip of paper so destroyed, which must in like manner, be entered in the minutes of the drawing;

6. The same proceeding must be had as often as may be necessary, until the whole number of jurors required are drawn;

7. The minute of the drawing must then be signed by the Clerk and the attending officers or persons, and filed in the Clerk's office;

8. Separate lists of the names of the persons so drawn for trial jurors, and of those drawn for grand jurors, specifying for what Court they were drawn, must be made and certified by the Clerk and the attending officers or persons, and delivered to the Sheriff of the county.

SEC. 95. After the adjournment of any Court at which jurors have been returned, as herein provided, the Clerk must enclose the ballots containing the names of those who attended and served as jurors in an envelope, under seal, and the ballots of those who did not attend and serve must be returned to the jury box. The ballots sealed in envelopes must not be returned to the jury box.

After adjournment of Court, disposition to be made of ballots.

SEC. 96. The Clerk of the District Court must furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the list of jurors drawn to attend any Court.

Copy of list to be furnished by Clerk.

SEC. 97. As soon as he receives the list of jurors drawn, the Sheriff must summon the persons named therein to attend, by giving personal notice to each, or by leaving a written notice at his place of residence, with some person of proper age, and must return the list to the Court at the time fixed in the order for their appearance, specifying the names of those who were summoned and the manner in which each person was notified.

Sheriff to summon jurors, how.

The grand jurors shall be summoned to appear on the first day of the term, at the hour of eleven o'clock in the forenoon, and the trial jurors on such day of the term, and at such hour as the presiding Judge of the Court may by order direct.

SEC. 98. Whenever jurors are not drawn and summoned to attend any Court of record, or a sufficient number of jurors fail to appear, such Court may, in its discretion, order a sufficient number to be drawn and summoned to attend such Court; or it may, by an order entered on its minutes, direct the Sheriff of the county to summon so many good and lawful men of his county to serve as jurors as the case may require. And in either case such jurors must be summoned in the manner provided by the preceding section.

Court may order jury drawn, when.

SEC. 99. When there are not competent jurors enough present to form a panel, the Court may direct the Sheriff or other proper officer to summon a sufficient number of persons, having the qualification of jurors, to complete the panel, from the body of the county or from the bystanders, and the Sheriff must summon the number so ordered, accordingly, and return the names to the Court.

When jury may be completed from the body of the county, or from the bystanders.

The jurors summoned under this, or the preceding section may be required to appear forthwith or at a time to be named in the order, as the Court may direct, and the officer summoning such jurors shall return the order as hereinbefore provided.



Jurors for Probate and Justice's Courts, by whom summoned.

SEC. 100. When jurors are required in any Probate or Justice's Court, they must, upon the order of the Judge or Justice thereof, be summoned by the Sheriff, Marshal, or Constable of the Jurisdiction.

How summoned.

SEC. 101. Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Officer's return.

SEC. 102. The officer summoning such jurors must, at the time fixed in the order for their appearance, return it, with a list of the persons summoned indorsed thereon.

How summoned.

SEC. 103. Juries of inquest must be summoned by the officer before whom the proceedings are had, or any Sheriff, or Constable, from the persons resident of the county competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Obedience to summons, how enforced.

SEC. 104. Any juror summoned who willfully, and without reasonable excuse, fails to attend, may be attached and compelled to attend, and the Court may also impose a fine not exceeding one hundred dollars, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard.

Grand Jury, when to be impaneled.

SEC. 105. At the opening of each regular term of the District Court (unless otherwise directed by the Judge), and as often thereafter as to the Judge may seem proper, a Grand Jury may be impaneled.

Grand Jury how constituted.

SEC. 106. Sixteen persons shall constitute a Grand Jury, twelve of whom shall constitute a quorum, and when of the jurors summoned no more nor less than sixteen attend they shall constitute the Grand Jury. If more than sixteen attend the Clerk must call over the list summoned, and the sixteen first answering shall constitute the Grand Jury. If less than sixteen attend, the panel may be filled to sixteen as provided in Section 98.

How impaneled.

SEC. 107. Thereafter such proceedings shall be had in impaneling the Grand Jury as are prescribed in the Criminal Practice Act.

Names of trial jurors how kept.

SEC. 108. At the time when the order for the trial jurors was made returnable, or as soon thereafter as convenient, the Clerk under the direction of the Court must call the names of those summoned, and the Court may then hear the excuses of jurors summoned. The Clerk must then write the names of the jurors present and not



excused, upon separate slips or ballots of paper, and fold such slips so that the names are concealed, and then in the presence of the Court, deposit the slips or ballots in a box, which must be kept sealed until ordered by the Court to be opened. Same.

SEC. 109. When thereafter an action is called for trial by the Court such proceedings shall be had in impaneling the trial jury as are prescribed in this Act. Jury to be impaneled as prescribed, how.

SEC. 110. At the time appointed for a jury trial, in Probate or Justices' Courts, the list of jurors summoned must be called, and the names of those attending must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box, from which the trial jury must be drawn. Proceedings in forming jury in Courts not of record.

SEC. 111. Thereafter, if the action is a criminal one, the jury must be impaneled as provided by the statutes relating thereto. If a civil one as provided by this Act. In Criminal cases.

SEC. 112. The mode and manner of impaneling juries of inquest are provided for in the provisions of the different statutes relating to such inquests. Mode and manner of impaneling.

## CHAPTER VIII.

### ATTORNEYS AND COUNSELORS AT LAW.

#### SECTION 113. Who may be admitted as attorneys.

- 114. Qualifications.
- 115. Certificate of admission. License.
- 116. Oath.
- 117. Attorneys of other States and Territories.
- 118. Roll of attorneys.
- 119. Penalty for practicing without license.
- 120. General duties.
- 121. Authority of attorney.
- 122. Change of attorney.
- 123. Notice of change.
- 124. Death or removal of attorney.
- 125. Removal and suspension.
- 126. Conviction of felony. Moral turpitude.
- 127. Proceedings for removal or suspension.
- 128. Accusation.
- 129. Verification.
- 130. Citation to answer.
- 131. Appearance.
- 132. How to answer.
- 133. Demurrer.
- 134. Answer.
- 135. Trial.
- 136. Reference.
- 137. Judgment.

Who may be  
admitted as  
attorneys.

SECTION 113. Any white male citizen, or white male person, resident of this Territory, who has bona fide declared his intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all Courts of this Territory.

Qualifications  
of attorney and  
counselor.

SEC. 114. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and, except as hereinafter provided, undergo a strict examination in open Court as to his qualifications, by the Justices of the Supreme Court; *provided*, that the several District Courts of this Territory may admit applicants to practice as attorneys and counselors in their respective Courts upon like testimonials and examination.

License.

SEC. 115. If, upon such examination in the Supreme Court, the applicant is found qualified, the Court shall admit him as attorney and counselor in all the Courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the Clerk of the Court, which certificate is his license.

Oath, etc.

SEC. 116. Every person, before receiving license to practice law, shall take the oath prescribed by law, and shall pay to the Territorial treasurer the sum of twenty-five dollars for the use of the Territorial library fund, and the Clerk of the Court shall require of the person so admitted the receipt of the said treasurer, before issuing such license, and in no case shall the oath be administered or the license issued until such receipt is produced and filed in the office of the Clerk.

Attorneys of  
other States  
and Territories.

SEC. 117. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor in the highest Court of any State or other Territory, and his affidavit of such admission, showing the county State or Territory, the name of the Court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission.

Roll of Attor-  
neys.

SEC. 118. Each Clerk must keep a roll of attorneys and counselors admitted to practice by the Court of which he is Clerk, which roll must be signed by the person admitted before he receives his license.

Penalty for  
practicing  
without  
license.

SEC. 119. If any person shall practice law in any Court, except a Justice's Court, without having received

a license as attorney and counselor, he is guilty of a contempt of Court.

SEC. 120. It is the duty of an attorney and counselor: General duties.

1. To support the Constitution and laws of the United States and of this Territory;

2. To maintain the respect due to the Courts of justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the Judges by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest;

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed;

SEC. 121. An attorney and counselor has authority: Authority of attorney.

1. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the the Clerk, or entered upon the minutes of the Court, and not otherwise;

2. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

SEC. 122. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: Change of attorney.

1. Upon his own consent, filed with the clerk, or entered upon the minutes;

2. Upon the order of the Court or Judge thereof, upon the application of the client, after notice to the attorney.

SEC. 123. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance Notice of change.

of the party in person, must be given to the adverse party; until then, he must recognize the former attorney.

Death or  
removal of  
attorney.

SEC. 124. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

Removal and  
suspension.

SEC. 125. An attorney and counselor may be removed or suspended by the Supreme Court, and by the District Courts for either of the following causes, arising after his admission to practice:

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

2. Willful disobedience or violation of an order of the Court requiring him to do or forbear an act connected with or in the course of his profession, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

3. Corruptly and without authority, appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as an attorney and counselor by any other person who is not an attorney and counselor.

In all cases where an attorney is removed or suspended by a District Court, the judgment or order of removal or suspension may be reviewed on appeal, by the Supreme Court.

Conviction of  
felony.

Moral  
turpitude.

SEC. 126. In case of the conviction of an attorney or counselor of a felony, or misdemeanor involving moral turpitude, the Clerk of the Court in which a conviction is had must, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Proceedings  
for removal  
or suspension.

SEC. 127. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of Section 125, must be taken by the Court on the receipt of a certified copy of the record of conviction. The proceedings under the second subdivision of Section 125 may be taken by the Court for matters within its knowledge, or may be taken upon the information of another.

Accusation.

SEC. 128. If the proceedings are upon the information of another, the accusation must be in writing.

Verification.

SEC. 129. The accusation must state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

SEC. 130. After receiving the accusation the Court must, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or subsequent term, and must cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order. Citation to answer.

SEC. 131. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the Court assign another day for that purpose; if he do not appear, the Court may proceed and determine the accusation in his absence. Appearance.

SEC. 132. The accused may answer to the accusation either by objecting to its sufficiency or denying it. How to answer.

SEC. 133. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes. Demurrer.

SEC. 134. If an objection to the sufficiency of the accusation be not sustained, the accused must answer within such time as may be designated by the Court. Answer.

SEC. 135. If the accused plead guilty, or refuse to answer the accusation, the Court must proceed to judgment of removal or suspension. If he deny the matters charged, the Court must, at such time as it may appoint, proceed to try the accusation. Trial.

SEC. 136. The Court may, in its discretion, order a reference to a committee to take depositions in the matter. Reference.

SEC. 137. Upon conviction, in cases arising under the first subdivision of section 125, the judgment of the Court must be that the name of the party must be stricken from the roll of attorneys and counselors of the Court, and that he be precluded from practicing as such attorney or counselor in all the Courts of this Territory, and, upon conviction in cases under the other subdivisions of that section, the judgment of the Court may be according to the gravity of the offense charged—deprivation of the right to practice as an attorney or counselor in the Courts of this Territory, permanently, or for a limited period. Judgment.

## CHAPTER IX.

## OF THE FORM OF CIVIL ACTIONS.

SECTION 138. One form of civil action only.

139. Parties to action, how designated.

140. Special issues not made by pleadings, how tried.

SECTION 138. There is in this Territory but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.

SEC. 139. In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

SEC. 140. A question of fact not put in issue by the pleadings may be tried by a jury, upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

One form of civil action only.

Parties to actions, how designated.

Special issues not made, by pleadings, how tried.

## CHAPTER X.

## OF THE TIME OF COMMENCING CIVIL ACTIONS.

SECTION 141. Commencement of civil actions.

142. When the people will not sue.

143. Seizin within five years when necessary in action for real property.

144. Such seizin, when necessary in action or defense arising out of title to or rents of real property.

145. Entry on real estate.

146. Possession, when presumed. Occupation deemed under legal title, unless adverse.

147. Occupation under written instrument or judgment, when deemed adverse.

148. What constitutes adverse possession under written instrument or judgment.

149. Premises actually occupied under claim of title deemed to be held adversely.

150. What constitutes adverse possession under claim of title not written.

151. Relation of landlord and tenant as affecting adverse possession.

152. Right of possession not affected by descent caste.

153. Certain disabilities excluded from time to commence actions.

154. Periods of limitation prescribed.

155. Within six years.

156. Within five years.

157. Within four years.

158. Within three years.

159. Within two years.
160. Within one year.
161. Within six months.
162. Where cause of action accrues on mutual account.
163. Action for a deposit.
164. Actions for relief not hereinbefore provided for.
165. Actions by the people subject to the limitations of this Chapter
166. Action to redeem a mortgage without account of rents and profits.
167. Same, when there are two or more such mortgages.
168. When an action is commenced.
169. Exception, where defendant is out of the Territory.
170. Exception, as to persons under disabilities.
171. Provision where person entitled dies before limitation expires.
172. In suits by aliens, time of war to be deducted.
173. Provision where judgment has been reversed.
174. Provision where action is stayed by injunction.
175. Disability must exist when right of action accrued.
176. When two or more disabilities exist, etc.
177. This Title not applicable to actions against Directors, etc. Limitations in such cases prescribed.
178. Acknowledgment or new promise must be in writing.
179. Limitation laws of other States, effect of.
180. Existing causes of action not affected.
181. Word "action" construed, how.

**SECTION 141.** Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute. Commencement of civil actions.

**SEC. 142.** The People of this Territory will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless: When the people will not sue.

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

**SEC. 143.** No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action; and this section includes possessory rights to lands and mining claims. Seizin within five years, when necessary in action for real property.

**SEC. 144.** No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor Such seizin when necessary in action or defense arising out of title to or rent of real property.



predecessor, or grantor of such person was seized or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made.

Entry on real estate.

SEC. 145. No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued.

Possession when presumed.

SEC. 146. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.

Occupation deemed under legal title, unless adverse.

Occupation under written instrument or judgment, when deemed adverse.

SEC. 147. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

What constitutes adverse possession under written instrument or judgment.

SEC. 148. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not enclosed according to the



usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 149. Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied, and no other, is deemed to have been held adversely. Premises actually occupied under claim of title deemed to be held adversely.

SEC. 150. For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only: What constitutes adverse possession under claim of title not written. 5/x

1. Where it has been protected by a substantial inclosure;

2. Where it has been usually cultivated or improved.

*Provided, however,* that in no case shall adverse possession be considered established under the provisions of any Sections of this Code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, Territorial, county, or municipal, which have been levied and assessed upon such land according to law.

SEC. 151. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited. Relation of landlord and tenant as affecting adverse possession.

SEC. 152. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property. Right of possession not affected by descent cast.

SEC. 153. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title first descends or accrues, either: Certain disabilities excluded from time to commence actions.

1. Within the age of majority; or,
2. Insane; or,

Same.

3. Imprisoned on a criminal charge, or in execution, upon conviction of a criminal offense, for a term less than for life; or,

4. A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense;

—The time during which such disability continues is not deemed any portion of the time in this Chapter limited for the commencement of such action or the making of such entry or defense; but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

Periods of limitations prescribed.

SEC. 154. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Within six years.

SEC. 155. Within six years:

1. An action upon a judgment or decree of any Court of the United States, or of any State or Territory within the United States;

2. An action for mesne profits of real property.

Within five years.

SEC. 156. Within five years:

An action upon any contract, obligation, or liability founded upon an instrument in writing.

Within four years.

SEC. 157. Within four years:

An action upon a contract, obligation, or liability, not founded upon an instrument of writing.

Within three years.

SEC. 158. Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture;

2. An action for trespass upon real property;

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

Within two years.

SEC. 159. Within two years:

1. An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution;

2. An action upon a statute for a penalty or forfeiture-Same.  
 where the action is given to an individual, or to an  
 individual and the Territory except where the statute  
 imposing it prescribes a different limitation;

3. An action upon a statute, or upon an underta-  
 king in a criminal action, for a forfeiture or penalty to  
 a county or to the people of the Territory;

4. An action to recover damages for the death of one  
 caused by the wrongful act of another;

5. An action for libel, slander, assault, battery, false  
 imprisonment, or seduction;

6. An action against a Sheriff, or other officer, for  
 the escape of a prisoner, arrested or imprisoned on civil  
 process.

SEC. 160. Within one year:

With'n one  
year.

An action against an officer, or officer *de facto*:

1. To recover any goods, wares, merchandise, or oth-  
 er property, seized by any such officer in his official ca-  
 pacity as Tax Collector, or to recover the price or value  
 of any goods, wares, merchandise, or other personal  
 property so seized, or for damages for the seizure, de-  
 tention, sale of, or injury to any goods, wares, merchan-  
 dise, or other personal property seized, or for damages  
 done to any person or property in making any such  
 seizure.

2. For money paid to any such officer under protest,  
 or seized by such officer in his official capacity as a col-  
 lector of taxes, and which, it is claimed, ought to be re-  
 funded.

SEC. 161. Actions on claims against a county, which  
 have been rejected by the Board of Commissioners, must  
 be commenced within six months after the first rejection  
 thereof by such Board.

Within six  
months.

SEC. 162. In an action brought to recover a balance  
 due upon a mutual, open and current account, where  
 there have been reciprocal demands between the parties,  
 the cause of action is deemed to have accrued from  
 the time of the last item proved in the account on either  
 side.

Where cause of  
action accrues  
on mutual  
account.

SEC. 163. To actions brought to recover money or  
 other property deposited with any bank, banker, trust  
 company, or savings and loan society, no limitation be-  
 gins to run until after an authorized demand.

No limitation.

SEC. 164. An action for relief not hereinbefore pro-  
 vided for must be commenced within four days after the  
 cause of action shall have accrued.

Actions for  
relief not  
hereinbefore  
provided for.

SEC. 165. The limitations prescribed in this Chapter

Actions by the people subject to the limitations of this Chapter.

Action to redeem a mortgage without account of rents and profits.

Same, when there are two or more such mortgages.

When an action is commenced.

Exception, where defendant is out of the Territory.

Exception, as to persons under disabilities.

apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions by private parties.

SEC. 166. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for five years after breach of some condition of the mortgage.

SEC. 167. If there is more than one such mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of this Chapter, any one of them who is entitled to maintain such an action may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting, for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

SEC. 168. An action is commenced, within the meaning of this Chapter, when the complaint is filed.

SEC. 169. If, when the cause of action accrues against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory, and if, after the cause of action accrues, he departs from the Territory, the time of his absence is not part of the time limited for the commencement of the action.

SEC. 170. If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal Court for a term less than for life; or,

4. A married woman, and her husband be a necessary party with her in commencing such action:

—The time of such disability is not a part of the time limited for the commencement of the action.

SEC. 171. If a person entitled to bring an action die before the expiration of the time limited for the com.

mencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Provision where person entitled dies before limitation expires.

SEC. 172. When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

In suits by aliens, time of war to be deducted.

SEC. 173. If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives, may commence a new action within one year after the reversal.

Provision where judgment has been reversed.

SEC. 174. When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Provision where action is stayed by injunction.

SEC. 175. No person can avail himself of a disability, unless it existed when his right of action accrued.

Disability must exist when right of action accrued. When two or more disabilities exist, etc.

SEC. 176. When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

SEC. 177. This Chapter does not affect actions against Directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

This chapter not applicable to actions against Directors, etc. Limitations in such cases prescribed.

SEC. 178. No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this Chapter, unless the same is contained in some writing, signed by the party to be charged thereby.

Acknowledgment or new promise must be in writing.

SEC. 179. When a cause of action has arisen in another State or Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against

Limitation laws of other States & Territories, effect of.

him in this Territory, except in favor of one who has been a citizen of this Territory, and who has held the cause of action from the time it accrued.

Existing causes  
of action not  
affected.

SEC. 180. This Chapter does not extend to actions already commenced, nor to cases where the time prescribed in any existing statute for acquiring a right or barring a remedy has fully run, but the laws now in force are applicable to such actions and cases, and are repealed subject to the provisions of this section.

Word "action"  
construed  
how.

SEC. 181. The word "action," as used in this Chapter, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

## CHAPTER XI.

### OF THE PARTIES TO CIVIL ACTIONS.

SECTION 182. Action to be in name of party in interest.

183. Assignment of thing in action not to prejudice defense.

184. Executor, trustee, etc., may sue without joining the persons beneficially interested.

185. When a married woman is a party, actions by and against,

186. Wife may defend, when.

187. Infant to appear by guardian.

188. Guardian, how appointed.

189. Unmarried female may sue for her own seduction.

190. Father, etc., may sue for seduction of daughter, etc.

191. Father, etc., may sue for injury or death of child.

192. When representatives may sue for death of one caused by the wrongful act of another.

193. Who may be joined as plaintiffs.

194. Who may be joined as defendants.

195. Parties defendant in an action to determine conflicting claims to real property.

196. Parties holding title under a common source, when may join.

197. Parties in interest, when to be joined. When one or more may sue or defend for the whole.

198. Plaintiff may sue in one action the different parties to commercial paper.

199. Tenants in common, etc., may sever in bringing or defending actions.

200. Action, when not to abate by death or other disability. Proceedings in such case.

201. Another person may be substituted for the defendant.

202. Intervention, when it takes place, and how made.

203. Associates may be sued by name of association.

204. Court, when to decide controversy or to order other parties to be brought in.

Action to be in  
name of party  
in interest.

SECTION 182. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by this Code.

SEC. 183. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before maturity.

Assignment of thing in action not to prejudice defense.

SEC. 184. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted. A person with whom, or in whose name, a contract is made for the benefit of another, is a trustee of an express trust, within the meaning of this section.

Executor, trustee, may sue without joining the persons beneficially interested.

SEC. 185. When a married woman is a party, her husband must be joined with her, except:

Married woman as party.

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone.

2. When the action is between herself and her husband, she may sue or be sued alone.

3. When she is living separate and apart from her husband, by reason of his desertion of her, or by agreement in writing entered into between them, she may sue or be sued alone.

SEC. 186. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

Wife may defend, when.

SEC. 187. When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian *ad litem* appointed by the Court in which the action is pending in each case, or by a Judge thereof, or a Probate Judge. A guardian *ad litem* may be appointed in any case, when it is deemed by the Court in which the action or proceeding is prosecuted, or by a Judge thereof, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

Infant, etc., to appear by guardian.

SEC. 188. When a guardian *ad litem* is appointed by the Court, he must be appointed as follows:

Guardian, how appointed.

1. When the infant is plaintiff: upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant;

2. When the infant is defendant: upon the application of the infant, if he be of the age of fourteen years



Same.

and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

3. When an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

Unmarried female may sue for her own seduction.

SEC. 189. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Father, etc., may sue for seduction of daughter, etc.

SEC. 190. A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss to service.

Who may sue for injury and death of child.

SEC. 191. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

When representatives may sue.

SEC. 192. When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Damages.

Who may be joined as plaintiffs.

SEC. 193. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Code.

Who may be joined as defendants.

SEC. 194. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff; or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time



of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

SEC. 195. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants; and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

Defendants in action to determine adverse claims.

SEC. 196. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Claimants under a common source of title, may unite.

SEC. 197. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all.

Parties in interest, who may be joined.

When one or more may sue or defend for the whole.

SEC. 198. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

Plaintiff may sue in one action the different parties to commercial paper.

SEC. 199. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Tenants in common, &c., may severally bring or defend actions.

SEC. 200. An action or proceeding does not abate by the death or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the Court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other

Action when not to abate.

**Substitution.** transfer of interest, the action or proceeding may be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

**Another person may be substituted for the defendant.**

SEC. 201. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon notice to such person and the adverse party, apply to the Court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in Court the amount claimed on the contract, or delivering the property, or its value, to such person as the Court may direct; and the Court may, in its discretion, make the order.

**Intervention when, and how**

SEC. 202. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the Court, and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

**Associates may be sued by name of association.**

SEC. 203. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants and had been sued upon their joint liability.

**Court, when to decide controversy or to order other parties to be brought in.**

SEC. 204. The Court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without presence of other parties

the Court must then order them to be brought in. And <sup>same</sup> when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the Court, to be made a party, it may order him to be brought in, by the proper amendment.

## CHAPTER XII.

### OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

**SECTION 205.** Certain actions to be tried where the subject or some part thereof is situated.

206. Other actions, where the cause or some part thereof arose.

207. Place of trial of actions against counties.

208. Other actions according to the residence of the parties.

209. Action may be tried in any county, unless the defendant demand a trial in the proper county.

210. Place of trial may be changed in certain cases.

211. When Judge is disqualified, cause to be transferred.

212. Papers to be transmitted. Costs, etc. Jurisdiction, etc.

213. Proceedings after judgment in certain cases transferred.

**SECTION 205.** Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the Court to change the place of trial, as provided in this Code: Certain actions to be tried where the subject or some part thereof is situated.

1. For the recovery of real property, or of an estate or interest therein, or for the determination, in any form, of such right or interest, and for injuries to real property:

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property.

Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county so selected is the proper county for the trial of such action.

**SEC. 206.** Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the Court to change the place of trial: Other actions, where the cause or some part thereof arose.

1. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed;

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Place of trial of actions against counties.

SEC. 207. Actions against counties may be commenced and tried in any county in the Judicial District in which such county is situated, unless such actions are between counties, in which case they may be commenced and tried in any county not a party thereto.

Other actions according to the residence of the parties.

SEC. 208. In all other cases the action must be tried in the county in which the defendants, or some of them, reside at the commencement of the action; or, if none of the defendants reside in the Territory, or, if residing in this Territory, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any county where either of the parties reside or service is had; subject, however, to the power of the Court to change the place of trial as provided in this Code.

Action may be tried in any county, unless the defendant demand a trial in the proper county.

SEC. 209. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

Place of trial may be changed in certain cases.

SEC. 210. The Court may, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county;
2. When there is reason to believe that an impartial trial cannot be had therein;
3. When the convenience of witnesses and the ends of justice would be promoted by the change;
4. When from any cause the Judge is disqualified from acting.

When Judge is disqualified, cause to be transferred.

SEC. 211. If an action or proceeding is commenced or pending in a Court, and the Judge or Justice thereof is disqualified from acting as such, or if for any cause the Court orders the place of trial to be changed, it must be transferred for trial to a Court the parties may agree upon by stipulation in writing, or made in open Court and entered in the minutes; or, if they do not so agree, then to the nearest Court where the like objection or cause for making the order does not exist, as follows:

1. If in the District Court, to another District Court;
2. If in the Probate Court, to the District Court of the same county;
3. If in a Justice's Court, to another Justice's Court in the same county.

Sec. 212. When an order is made transferring an action or proceeding for trial, the Clerk of the Court, or Justice of the Peace, must transmit the pleadings and papers therein to the Clerk or Justice of the Court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The Court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Papers to be transmitted.

Costs, etc.

Jurisdiction, etc.

Sec. 213. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any Court of a county other than the county in which the real estate, or some portion of it, is situated, the Clerk of such Court must, after final judgment therein, certify, under his seal of office, and transmit to the corresponding Court of the county in which the real estate affected by the action is situated, a copy of the judgment. The Clerk receiving such copy must file, docket, and record the judgment in the records of the Court, briefly designating it as a judgment transferred from — Court (naming the proper Court).

Proceedings after judgment in certain cases transferred

## CHAPTER XIII.

### OF THE MANNER OF COMMENCING CIVIL ACTIONS.

#### SECTION 214. Actions, how commenced.

215. Complaint, how indorsed. When summons may be issued, and how waived.
216. Summons, how issued, directed, and what to contain.
217. Alias summons.
218. Notice of the pendency of an action affecting the title to real property.
219. Summons, how served and returned.
220. Summons, how served.
221. Publication when defendant is absent from the Territory—concealed, or a foreign corporation having no agent, etc.
222. Manner of publication and appointment of attorney.
223. Proceedings where there are several defendants and part only are served.
224. Proof of service, how made.
225. When jurisdiction of action acquired.

Action how commenced.	SECTION 214. Civil actions in the Courts of this Territory are commenced by filing a complaint.
Indorsement on complaint.	SEC. 215. The Clerk must indorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued; and if the action be brought against two or more defendants, who reside in different counties, may have a summons issued for each of such counties at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year, at any time before trial.
Summons.	
Waiver of summons.	
Summons, how issued, directed, and what to contain.	SEC. 216. The summons must be directed to the defendant, signed by the Clerk, and issued under the seal of the Court, and must contain: <ol style="list-style-type: none"> <li>1. The names of the parties to the action, the Court in which it is brought, and the county in which the complaint is filed;</li> <li>2. A statement of the nature of the action in general terms;</li> <li>3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days, if served out of the county, but in the district in which the action is brought, and within forty days if served elsewhere;</li> <li>4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it);</li> <li>5. In other actions, a notice that unless defendant so appears and answers the plaintiff will apply to the Court for the relief demanded in the complaint.</li> </ol> <p>The name of the plaintiff's attorney must be indorsed on the summons.</p>
Alias summons.	SEC. 217. If the summons is returned without being served on any or all of the defendants, the Clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original.
Constructive notice of pendency of action, how given.	SEC. 218. In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time

of filing his answer, when affirmative relief is claimed Same. in such answer, or at any time afterwards, may record in the office of the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only, shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

SEC. 219. The summons may be served by the Sheriff Summons, how served and returned. of the county where the defendant is found, or by any other person, over the age of eighteen, not a party to the action. A copy of the complaint must be served with the summons, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the Sheriff, it must be returned, with his certificate of its service, and of the service of any copy of the complaint where such copy is served, to the office of the Clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SEC. 220. The summons must be served by deliver- Summons upon whom served. ing a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this Territory to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier or secretary within this Territory to such agent, cashier, or secretary;

3. If against a minor, under the age of fourteen years, residing within this Territory; to such minor, personally, and also to his father, mother, or guardian; or if there be none within this Territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

4. If against a person residing within this Territory who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom



a guardian has been appointed: to such person and also to his guardian;

5. If against a county, city, or town: to the chairman of the Board of Commissioners, president of the Council, or Trustees, or other head of the legislative department thereof;

6. In all other cases to the defendant personally.

Publication when defendant is absent from the territory concealed, or a foreign corporation having no agent, etc.

SEC. 221. Where the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, or is a foreign corporation having no managing or business agent, Cashier, or Secretary within the Territory, and the fact appears by affidavit to the satisfaction of the Court, or a Judge thereof, or a Probate Judge, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such Court or Judge may make an order that the service be made by the publication of the summons.

Service by publication, how made.

SEC. 222. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the Territory, or absent therefrom, must not be less than one month. In case of publication, where the residence of a non-resident or absent defendant is known, the Court or Judge must direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory, is equivalent to publication and deposit in the post office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Proceedings where there are several defendants and part only are served.

SEC. 223. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Proof of service, how made.

SEC. 224. Proof of the service of summons and complaint must be as follows:



1. If served by the Sheriff, his certificate thereof; Same.
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the Post Office, if the same has been deposited; or,
4. The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

SEC. 225. From the time of the service of the summons and of a copy of a complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the Court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him. Jurisdiction  
when acquired  
—appearance.

## CHAPTER XIV.

### OF THE PLEADINGS IN CIVIL ACTIONS.

**SECTION 226.** Definition of pleadings.

227. This Code prescribes the form and rules of pleadings.
228. What pleadings are allowed.
229. Complaint, first pleading.
230. Complaint, what to contain.
231. What causes of action may be joined.
232. When defendant may demur.
233. Demurrer must specify, etc. May be taken to part. May answer and demur at same time.
234. What proceedings are to be had when complaint is amended.
235. Objection not appearing on complaint, may be taken by answer.
236. Objections, when deemed waived.
237. Answer, what to contain.
238. When counter claim may be set up.
239. When defendant omits to set up counter claim.
240. Counter claim not barred by death or assignment.
241. Answer may contain several grounds of defense. Defendant may answer part and demur to part of complaint.
242. Cross-complaint.
243. When plaintiff may demur to answer.
244. Grounds of demurrer.
245. Verification of pleadings.
246. Copy of written instrument contained in complaint admitted, unless answer is verified.
247. When defense is founded on written instrument set out in answer, its execution admitted, unless denied by plaintiff under oath.

- 248. Exceptions to rules prescribed by two preceding sections.
- 249. Pleadings to be liberally construed.
- 250. Sham and irrelevant answers, etc., may be stricken out.
- 251. How to state an account in pleadings.
- 252. Description of real property in a pleading.
- 253. Judgments, how pleaded.
- 254. Conditions precedent, how to be pleaded.
- 255. Statute of Limitations, how pleaded.
- 256. Private statutes, how pleaded.
- 257. Libel and slander, how stated in complaint. Not necessary to allege or prove special damages.
- 258. Answer in such cases.
- 259. Allegations not denied, when to be deemed true. When to be deemed controverted.
- 260. A material allegation defined.
- 261. Supplemental complaint and answer.
- 262. Pleadings subsequent to complaint must be filed and served.
- 263. Material variance, how provided for.
- 264. Immaterial variance, how provided for.
- 265. What not to be deemed a variance.
- 266. Amendments of course, and effect of demurrer.
- 267. Amendments by the Court. Enlarging time to plead and relieving from judgments, etc.
- 268. Suing a party by a fictitious name, when allowed.
- 269. No error or defect to be regarded unless it affects substantial rights.

Definition of pleadings.

SEC. 226. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.

This Code prescribes the form and rules of pleadings.

SEC. 227. The forms of pleading in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this Code.

What pleadings are allowed.

SEC. 228. The only pleadings allowed on the part of the plaintiff are:

1. The complaint ;
  2. The demurrer to the answer ;
- And on the part of the defendant:
1. The demurrer to the complaint;
  2. The answer.

Complaint, first pleading.

SEC. 229. The first pleading on the part of the plaintiff is the complaint.

Complaint what to contain.

SEC. 230. The complaint must contain:

1. The title of the action, the name of the Court and county in which the action is brought, and the names of the parties to the action;
  2. A statement of the facts constituting the cause of action, in ordinary and concise language ;
  3. A demand of the relief which the plaintiff claims.
- If the recovery of money or damages be demanded, the amount thereof must be stated.

What causes of action may be joined.

SEC. 231. The plaintiff may unite several causes of action in the same complaint, where they all arise out of:

MS 509

1. Contracts, express or implied; Same.
2. Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same;
3. Claims to recover specific personal property, with or without damages for the withholding thereof;
4. Claims against a trustee by virtue of a contract, or by operation of law;
5. Injuries to character;
6. Injuries to person;
7. Injuries to property.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

SEC. 232. The defendant may demur to the complaint within the time required in the summons to answer, When defendant may demur. when it appears upon the face thereof, either:

1. That the Court has no jurisdiction of the person of the defendant or the subject of the action; or,
2. That the plaintiff has not legal capacity to sue; or,
3. That there is another action pending between the same parties for the same cause; or,
4. That there is a defect or misjoinder of parties plaintiff or defendant; or,
5. That several causes of action have been improperly united; or,
6. That the complaint does not state facts sufficient to constitute a cause of action; or,
7. That the complaint is ambiguous, unintelligible, or uncertain.

SEC. 233. The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded. It may be taken to the whole complaint or to any of the causes of action stated therein, or the defendant may demur and answer at the same time. Demurrer must specify, etc. May be taken to part. May answer and demur at same time.

SEC. 234. If the complaint is amended, a copy of the amendments must be filed, or the Court may, in its discretion, require the complaint, as amended, to be filed; and a copy of the amendments, or amended complaint, must be served upon the defendants affected thereby. The defendant must answer the amendment or the com- What proceedings are to be had when complaint is amended.

plaint as amended, within ten days after service thereof, or such other time as the Court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

Objection not appearing on complaint, may be taken by answer.

Objections, when deemed waived.

SEC. 235. When any of the matters enumerated in Section 232 do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 236. If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Answer what to contain.

SEC. 237. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counter claim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

When counter-claim to be set up.

SEC. 238. The counter claim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising upon contract; any other cause of action arising also upon contract and existing at the commencement of the action.

When defendant omits to set up counter claim

SEC. 239. If the defendant omit to set up a counter claim in the cases mentioned in the first subdivision of the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Cross demands deemed compensated.

SEC. 240. When cross-demands have existed between persons under such circumstances that, if one had brought an action against the other, a counter claim

could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

SEC. 241. The defendant may set forth by answer as many defenses and counter claims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue.

Answer may contain several grounds of defense.

Defendant may answer part and demur to part of complaint.

SEC. 242. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the Court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.

Cross-complaint.

SEC. 243. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Demurrer to answer.

SEC. 244. The demurrer may be taken upon one or more of the following grounds:

Grounds of demurrer.

1. That several causes of counter claim have been improperly joined:

2. That the answer does not state facts sufficient to constitute a defense or counter claim;

3. That the answer is ambiguous, unintelligible, or uncertain.

SEC. 245. Every pleading must be subscribed by the party or his attorney; and when the complaint is verified, or when the Territory, or any officer of the Territory, in his official capacity, is plaintiff, the answer must be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or unless an officer of the Territory, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his knowledge, except as to the matters which are therein stated on his own information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a

Verification of pleadings.

Same.

party, unless the parties are absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

Copy of written instrument contained in complaint admitted, unless answer is verified.

SEC. 246. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified.

Genuineness of instrument how controverted.

SEC. 247. When the defense to an action is founded on written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Exceptions to rules prescribed by two preceding sections.

SEC. 248. But the execution of the instruments mentioned in the two preceding sections, is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same, is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case.

Pleadings to be liberally construed.

SEC. 249. In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Sham and irrelevant answers, etc., may be stricken out.

SEC. 250. Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the Court may, in its discretion, impose.

How to state an account in pleadings.

SEC. 251. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within ten days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The Court, or a Judge thereof, may order a further account, when the one delivered is too general, or is defective in any particular.

SEC. 252. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it. Description of real property in a pleading.

SEC. 253. In pleading a judgment or other determination of a Court, officer, or Board, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction. Judgments, how pleaded.

SEC. 254. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance. Conditions precedent, how to be pleaded.

SEC. 255. In pleading the Statute of Limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section — (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of THE CODE OF CIVIL PROCEDURE; and if such allegation be controverted, the party pleading must establish on the trial, the facts showing that the cause of action is so barred. Statute of Limitations, how pleaded.

SEC. 256. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage. Private statutes, how pleaded.

SEC. 257. In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish on the trial that it was so published or spoken. Libel and slander, how stated in complaint.

SEC. 258. In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances. Not necessary to allege or prove special damages.

SEC. 259. Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new Answer in such cases. Allegations not denied, when to be deemed true. When to



- be deemed controverted. matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party.
- A material allegation defined. SEC. 260. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.
- Supplemental complaint and answer. SEC. 261. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer.
- Pleadings to be filed and served. SEC. 262. All pleadings subsequent to the complaint must be filed with the clerk, and copies thereof served upon the adverse party or his attorney.
- Variance, when material. SEC. 263. No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the Court may order the pleading to be amended, upon such terms as may be just.
- Immaterial variance, how provided for. SEC. 264. Where the variance is not material, as provided in the last section, the Court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.
- What not to be deemed a variance. SEC. 265. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance, within the last two sections, but a failure of proof.
- Amendments of course on effect of demurrer. SEC. 266. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to complaint is overruled and there is no answer filed, the Court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied, to the extent mentioned in Section 259.
- Amendments on terms. SEC. 267. The Court may, in furtherance of justice and on such terms as may be proper, allow a party to amend any pleading or proceeding, by adding or striking



out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, Discretion and power of court. after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may, upon like terms, allow an answer to be made after the time limited by this Code, and also relieve a party, or his legal representative, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any reason satisfactory to the Court, or the Judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the Court, or the Judge thereof, in vacation, may grant the relief upon application made within a reasonable time, not exceeding six months after the adjournment of the term. When, from any cause, Affidavit may be disregarded. the summons in an action has not been personally served on the defendant, the Court may allow, on such terms as may be just, such defendant, or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action.

When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond, is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the Court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

SEC. 268. When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly. Suing a party by a fictitious name, when allowed.

SEC. 269. The Court must, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect. No error or defect to be regarded unless it affects substantial rights.

# PROVISIONAL REMEDIES.

## CHAPTER XV.

### ARREST AND BAIL.

- SECTION 270.** No person to be arrested except as prescribed by this Code.
- 271. Cases in which defendant may be arrested.
  - 272. Order for arrest, by whom made.
  - 273. Affidavit to obtain order, what to contain.
  - 274. Security by plaintiff before order of arrest.
  - 275. Order, when made, and its form.
  - 276. Affidavit and order to be delivered to the Sheriff, and copy to defendant.
  - 277. Arrest, how made.
  - 278. Defendant to be discharged on bail or deposit.
  - 279. Bail, how given.
  - 280. Surrender of defendant.
  - 281. Same.
  - 282. Bail, how proceeded against.
  - 283. Bail, how exonerated.
  - 284. Delivery of undertaking to plaintiff, and its acceptance or rejection by him.
  - 285. Notice of justification. New undertaking, if other bail.
  - 286. Qualification of bail.
  - 287. Justification of bail.
  - 288. Allowance of bail.
  - 289. Deposit of money with Sheriff.
  - 290. Payment of money into Court by Sheriff.
  - 291. Substituting bail for deposit.
  - 292. Money deposited, how applied or disposed of.
  - 293. Sheriff, when liable as bail, and his discharge from liability.
  - 294. Proceedings on judgment against Sheriff.
  - 295. Motion to vacate order of arrest, or reduce bail. Affidavits on motion.
  - 296. When the order vacated or bail reduced.

No person to be arrested except as prescribed by this Code.

**SECTION 270.** No person can be arrested in a civil action, except as prescribed in this Code.

**SEC. 271.** The defendant may be arrested, as hereinafter prescribed, in the following cases:

Defendant when subject to arrest.

1. In an action for the recovery of money or damages on a cause of action arising upon contract, where the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for willful injury to person, to character or to property, knowing the property to belong to another;

2. In an action for a fine or penalty, or on a promise Same. to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the Sheriff;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

SEC. 272. An order for the arrest of the defendant must be obtained from a Judge of the Court in which the action is brought, or from a Probate Judge. Order for arrest, by whom made.

SEC. 273. The order may be made whenever it appears to the Judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in § 271. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the Court. Affidavit for order of arrest, requisite.

SEC. 274. Before making the order, the Judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the Judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the Court. Undertaking required of plaintiff.

SEC. 275. The order may be made at the time of the issuing of the summons, or any time afterwards before judgment. It must require the Sheriff of the county where the defendant may be found, forthwith to arrest Order, when made, and its form

him and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the Clerk of the Court in which the action is pending.

Affidavit and order to be delivered to the Sheriff, and copy to defendant.

SEC. 276. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the Sheriff, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Arrest, how made.

SEC. 277. The Sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant to be discharged on bail or deposit.

SEC. 278. The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

Bail, how given.

SEC. 279. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant will at all times render himself amenable to the process of the Court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender of defendant.

SEC. 280. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Sheriff of the county where he was arrested.

Same.

SEC. 281. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the Sheriff to do so. Upon the arrest of defendant by the Sheriff, or upon his delivery to the Sheriff by the bail or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Bail, how proceeded against.

SEC. 282. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

Bail, how exonerated.

SEC. 283. The bail are exonerated by the death of the defendant or his imprisonment in the Territorial

Prison, or by his legal discharge from the obligation to render himself amenable to the process.

SEC. 284. Within the time limited for that purpose, the Sheriff must file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he is deemed to have accepted them, and the Sheriff is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the Clerk of the Court.

Delivery of undertaking to plaintiff, and its acceptance or rejection by him.

SEC. 285. Within five days after the receipt of notice, the Sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before a Judge of the Court, or Probate Judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there must be a new undertaking.

Notice of justification.

New undertaking, if other bail.

SEC. 286. The qualifications of bail are as follows:

Qualifications of bail.

1. Each of them must be a resident and householder, or freeholder within the territory;

2. Each must be worth the amount specified in the order of the arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 287. For the purpose of justification, each of the bail must attend before the Judge at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, in his discretion, may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Justification of bail.

SEC. 288. If the Judge find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the Sheriff is thereupon exonerated from liability.

Allowance of bail.

Deposit of  
money with  
Sheriff.

SEC. 289. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Chapter, the defendant may deposit such amount instead of giving bail. In either case the Sheriff must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

Payment of  
money into  
Court by Sher-  
iff.

SEC. 290. The Sheriff must, immediately after the deposit, pay the same into Court, and take from the Clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff's attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff, to collect the sum deposited, as in other cases of delinquency.

Substituting  
bail for depos-  
it.

SEC. 291. If money is deposited, as provided in the two last sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited must be refunded to the defendant.

Money deposi-  
ted, how ap-  
plied or dis-  
posed of.

SEC. 292. Where money has been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the Clerk must, under the direction of the Court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the Clerk must, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied.

Sheriff when  
liable as bail,  
and his dis-  
charge from li-  
ability.

SEC. 293. If, after being arrested, the defendant escape or is rescued, the Sheriff is liable as bail; but he may discharge himself from such liability by the giving bail at any time before judgment.

Proceedings on  
judgment  
against Sheriff.

SEC. 294. If a judgment is recovered against the Sheriff upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Motion to va-  
cate order of  
arrest or re-  
duce bail.

SEC. 295. A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the Judge of the Court in which the action is pending, or to the Court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise,

the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made. Contest of motion.

SEC. 296. If, upon application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced. When the order vacated or bail reduced.

## CHAPTER XVI.

### CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION 297. Delivery of personal property, when it may be claimed.

298. Affidavit and its requisites.

299. Requisition to Sheriff to take and deliver the property.

300. Security on the part of plaintiff, and proceedings in serving the order.

301. Exception to sureties and proceedings thereon, or on failure to except.

302. Defendant, when entitled to redelivery.

303. Justification of defendant's sureties.

304. Qualification of sureties.

305. Property, how taken when concealed in building or inclosure.

306. Property, how kept.

307. Claim of property by third person.

308. Notice and affidavit, when and where to be filed.

SECTION 297. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter. Delivery of personal property, when it may be claimed.

SEC. 298. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing: Affidavit and its requisites.

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property.



Requisition to Sheriff to take and deliver the property.

SEC. 299. The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the Sheriff of the county where the property claimed may be, to take the same from the defendant.

Security on the part of the plaintiff and proceedings in serving the order.

SEC. 300. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Sheriff, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the Sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or, if neither have any known place of abode, by putting them in the nearest Post Office, directed to the defendant.

Exception to sureties and proceedings thereon, or on failure to except.

SEC. 301. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the Sheriff is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant, when entitled to redelivery.

SEC. 302. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must



be delivered to the plaintiff, except as provided in Section 307.

SEC. 303. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, must justify before the Judge of the Court or Probate Judge, in the same manner as upon bail on arrest; and upon such justification the Sheriff must deliver the property to the defendant. The Sheriff is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Justification of  
defendant's  
sureties.

SEC. 304. The qualification of sureties must be such as are prescribed by this Code, in respect to bail upon an order of arrest.

Qualification  
of sureties.

SEC. 305. If the property, or any part thereof, be concealed in a building or inclosure, the Sheriff must publicly demand its delivery. If it be not delivered, he must cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Property, how  
taken when  
concealed in  
building or in-  
closure.

SEC. 306. When the Sheriff has taken property, as in this Chapter provided, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same.

Property, how  
kept.

SEC. 307. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the Sheriff, the Sheriff is not bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, indemnify the Sheriff against such claim, by an undertaking by two sufficient sureties.

Claim of prop-  
erty by third  
person.

SEC. 308. The Sheriff must file the notice, undertaking, and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

Notice and af-  
fidavit, and  
where to be  
filed.

## CHAPTER XVII.

## INJUNCTION.

**SECTION 309.** Injunction, what is, and who may grant it.

**310.** When it may be granted.

**311.** At what time it may be granted, and what is required to obtain it

**312.** Injunction after answer.

**313.** Security upon injunction.

**314.** Order to show cause why injunction should not be granted.

**315.** Injunction to suspend business of a corporation, how and by whom granted.

**316.** Motion to vacate or modify injunction.

**317.** When to be vacated or modified.

Injunction,  
what is, and  
who may grant  
it

309

When it may  
be granted.

**SECTION 309.** An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the Court in which the action is brought, or by a Judge thereof, and when made by a Judge, it may be enforced as the order of the Court.

**SEC. 310.** An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, great or irreparable injury to the plaintiff;

3. When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

At what time it  
may be  
granted, and  
what is re-  
quired to ob-  
tain it.

**SEC. 311.** The injunction may be granted at the time of issuing the summons, upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other, must show satisfactorily that sufficient grounds exist therefor. No injunction can be granted on the complaint unless it is verified. When granted on the complaint, a copy of the complaint and verification attached must be served with the injunction; when granted upon affidavit, a copy of the affidavit must be served with the injunction.

Injunction af-  
ter answer.

**SEC. 312.** An injunction cannot be allowed after the defendant has answered, unless upon notice, or upon an

order to show cause; but in such case the defendant may be restrained until the decision of the Court or Judge granting or refusing the injunction.

SEC. 313. On granting an injunction, the Court or Judge must require, except when the Territory, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before the Judge or a Probate Judge, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Undertaking  
on injunction.

Justification of  
sureties.

SEC. 314. If the Court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Order to show  
cause why in-  
junction  
should not be  
granted.

SEC. 315. An injunction to suspend the general and ordinary business of a corporation cannot be granted except by the Court or a Judge thereof; nor can it be granted without due notice of the application therefor to the proper officers or agent of the corporation, except when the people of this Territory are a party to the proceeding.

Injunction to  
suspend busi-  
ness of a corpo-  
ration, how  
and by whom  
granted.

SEC. 316. If an injunction be granted without notice, the defendant, at any time before the trial, may apply to the Judge who granted the injunction, or to the Court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or the answer, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavits on the part of the defendant, it must be upon reasonable notice to the plaintiff, and in that case, but not otherwise, the plaintiff may oppose the

Motion to va-  
cate or modify  
injunction

When to be  
vacated or  
modified.

same by affidavits or other evidence, in addition to those on which the injunction was granted.

SEC. 317. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it must be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it must be modified.

## CHAPTER XVIII.

### ATTACHMENT.

- SECTION 318. Attachment, when and in what cases may issue.
319. Affidavit for attachment, what to contain.
320. Undertaking on attachment.
321. Writ, to whom directed and what to state.
322. Shares of stock and debts due defendant, how attached and disposed of.
323. How real and personal property shall be attached.
324. Attorney to give written instructions to Sheriff what to attach.
325. Garnishment, when garnishee liable to plaintiff.
326. Citation to garnishee to appear before a Court or Judge.
327. Inventory, how made. Party refusing to give memorandum may be compelled to pay costs.
328. Perishable property, how sold. Accounts without suit to be collected.
329. Property attached may be sold as under execution, if the interests of the parties require.
330. When property claimed by a third party, how tried.
331. If plaintiff obtains judgment, how satisfied.
332. When there remains a balance due, how collected.
332. When suits may be commenced on the undertaking.
334. If defendant recover judgment, what the Sheriff is to deliver.
335. Proceedings to release attachment, before whom taken.
336. Attachment, in what cases it may be released and upon what terms.
337. When a motion to discharge attachment may be made, and upon what grounds.
338. When motion made on affidavit, it may be opposed by affidavit.
339. When writ must be discharged.
340. When writ to be returned.

Attachment  
when may is-  
sue and in  
what cases.

SECTION 318. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

1. In an action upon a contract, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the

person to whom the security was given, become valueless;

2. In an action upon a contract, against a defendant not residing in this Territory.

SEC. 319. The Clerk of the Court must issue the writ of attachment, upon receiving an affidavit by or on behalf of plaintiff, setting forth:

Affidavit for attachment, what to contain.

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter claims,) upon a contract, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; or,

2. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter claims), and that the defendant is a non-resident of the Territory, and

3. That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

SEC. 320. Before issuing the writ, the Clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Undertaking on attachment.

SEC. 321. The writ must be directed to the Sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be, attached; in which case, to take such undertaking. Several writs may be issued at the same time to the Sheriffs of different counties; and the

Writ, to whom directed and what to state.

Shares of stock  
and debts due  
defendant,  
how attached  
and disposed  
of

plaintiff may have other writs of attachment as often as he may require at any time before judgment.

SEC. 322. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How real and  
personal prop-  
erty shall be  
attached.

SEC. 323. The Sheriff to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in Section 321 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one, if not, then by posting the same in a conspicuous place, on the property attached;

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the county, or at the residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The Recorder must index such attachment when filed, in the names, both of the defendant and of the person by whom the property is held or in whose name it stands on the records:

3. Personal property, capable of manual delivery must be attached by taking it into custody;

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the President, or other head of the same, or the Secretary, Cashier, or other managing agent thereof, a

copy of the writ, and a notice stating that the stock or same interest of the defendant is attached, in pursuance of such writ;

5. Debts and credits, and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

SEC. 324. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the Sheriff must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Attorney to give written instructions to Sheriff what to attach.

SEC. 325. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Garnishment, when garnishee liable to plaintiff.

SEC. 326. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the Court or Judge, or a referee appointed by the Court or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The Court or Judge may, after such examination, order personal property, capable of manual deliver, to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Citation to garnishee to appear before a Court or Judge.

SEC. 327. The Sheriff must make a full inventory of the property attached, and return the same with the writ.

Inventory, how made.



Party refusing to give memorandum may be compelled to pay costs.

To enable him to make such return as to the debts and credit attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

Perishable property, how sold.

SEC. 328. If any of the property attached be perishable, the Sheriff must sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The Sheriff's receipt is a sufficient discharge for the amount paid.

Accounts without suit to be collected.

Property attached may be sold as under execution, if the interests of the parties require.

SEC. 329. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactory to the Court, or a Judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the Court or Judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the Court, to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

When property claimed by a third party, how tried.

SEC. 330. If any personal property attached be claimed by a third person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

If plaintiff obtains judgment, how satisfied.

SEC. 331. If judgment be recovered by the plaintiff, the Sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or



credits collected by him, or so much as shall be necessary <sup>same</sup> to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

SEC. 332. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the Sheriff must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment. When there remains a balance due, how collected.

SEC. 333. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to Section 321 or Section 336, or he may proceed, as in other cases, upon the return of an execution. When suits may be commenced on the undertaking.

SEC. 334. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands, must be delivered to the defendant or his agent. The order of attachment shall be discharged, and the property released therefrom. If defendant recover judgment, what the Sheriff is to deliver.

SEC. 335. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the Court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment any or all of the property attached, and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff. Proceedings to release attachment, before whom taken.

SEC. 336. Before making such order, the Court or Judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and free- Release from attachment, on what terms.

Same.

holders, or householders, in the County, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The Court or Judge making such order may fix the sum for which the undertaking must be executed, and, if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the Court or Judge, and the property attached cannot be released from the attachment without their justification, if the same be required.

Motion for discharge of writ, when and before whom made.

SEC. 337. The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, or to the Judge thereof, that the writ of attachment be discharged, on the ground that the same was improperly or irregularly issued.

When motion made on affidavit, it may be opposed by affidavit.

SEC. 338. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

When writ must be discharged.

SEC. 339. If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

When writ to be returned.

SEC. 340. The Sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

## CHAPTER XIX.

## RECEIVERS.

**SECTION 341.** Appointment of Receiver.

**342.** Appointment of Receivers upon dissolution of corporations.

**343.** Who shall not be appointed.

**344.** Oath and undertaking.

**345.** Powers of Receivers.

**346.** Investment of funds.

**SECTION 341.** A receiver may be appointed by the Court in which an action is pending, or has passed to judgment, or by the Judge thereof: Appointment of Receiver.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where Receivers have heretofore been appointed by the usages of Courts of equity.

**SEC. 342.** Upon the dissolution of any corporation, the District Court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may Appointment of Receivers upon dissolution of corporations.

appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Receiver, appointment; undertaking on ex parte application.

SEC. 343. No party, or attorney or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex parte* application, the Court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the Court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the Court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking.

SEC. 344. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court or Judge, execute an undertaking to such person, and in such sum as the Court or Judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court therein.

Powers of Receivers.

SEC. 345. The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize.

Investment of funds.

SEC. 346. Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order can be made, except upon the consent of all the parties to the action.

## CHAPTER XX.

## DEPOSIT IN COURT.

## SECTION 347. Deposit in Court.

348. Money paid to Clerk must be deposited with County Treasurer.

349. Manner of enforcing the order.

SECTION 347. When it is admitted by the pleading, or Deposit in Court. shown upon the examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the Court may order the same, upon motion, to be deposited in Court or delivered to such party, upon such conditions as may be just, subject to the further direction of the Court.

SEC. 348. If the money is deposited in Court it must Money paid to Clerk must be deposited with County Treasurer. be paid to the Clerk, who must deposit it with the County Treasurer, by him to be held subject to the order of the Court. For the safe keeping of the money deposited with him the Treasurer is liable on his official bond.

SEC. 349. Whenever, in the exercise of its authority, Manner of enforcing the order. a Court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the Court, beside punishing the disobedience, may make an order requiring the Sheriff to take the money, or thing, and deposit or deliver it in conformity with the direction of the Court.

## CHAPTER XXI.

## JUDGMENT IN GENERAL.

## SECTION 350. Judgment defined.

351. Judgment may be for or against one of the parties.

352. Judgment may be against one party and action proceed as to others.

353. The relief to be awarded to the plaintiff.

354. Action may be dismissed or nonsuit entered.

355. All other judgments are on the merits.

356. In what cases judgment may be had upon the failure to answer.

SECTION 350. A judgment is the final determination Judgment defined. of the rights of the parties in an action or proceeding

Judgment may be for or against one of the parties.

SEC. 351. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Judgment may be against one party and action proceed as to others.

SEC. 352. In an action against several defendants, the Court may, in its descretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

The relief to be awarded to the plaintiff.

SEC. 353. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Action may be dismissed or nonsuit entered.

SEC. 354. An action may be dismissed, or a judgment of nonsuit entered, in the following cases:

1. By the plaintiff himself, at any time before trial, upon the payment of costs; *provided*, a counter-claim has not been made or affirmative relief sought by the cross-complaint or answer of defendant. If a provisional remedy has been allowed the undertaking must thereupon be delivered by the Clerk to the defendant, who may have his action thereon.

2. By either party, upon the written consent of the other;

3. By the Court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

4. By the Court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it;

5. By the Court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury.

The dismissal mentioned in the first two subdivisions is made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly.

All other judgments are on the merits.

SEC. 355. In every case, other than those mentioned in the last section, judgment must be rendered on the merits.

In what cases judgment may be had upon the failure of the defendant to answer.

SEC. 356. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed by the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately there-

after enter judgment for the amount specified in the sum- Same.  
mons, including the costs against the defendant, or  
against one or more of several defendants, in the cases  
provided for in Section 223;

2. In other actions, if no answer has been filed with  
the Clerk of the Court within the time specified in the  
summons, or such further time as may have been granted,  
the Clerk must enter the default of the defendant; and  
thereafter the plaintiff may apply at the first or any sub-  
sequent term of the Court for the relief demanded in the  
complaint. If the taking of an account, or the proof of  
any fact, is necessary to enable the Court to give judg-  
ment, or to carry the judgment into effect, the Court may  
take the account or hear the proof; or may, in its discre-  
tion, order a reference for that purpose. And where the  
action is for the recovery of damages, in whole or in part,  
the Court may order the damages to be assessed by a  
jury; or if, to determine the amount of damages, the ex-  
amination of a long account be involved, by a reference  
as above provided;

3. In actions where the service of the summons was  
by publication, the plaintiff, upon the expiration of the  
time for answering, may, upon proof of the publication,  
and that no answer has been filed, apply for judgment;  
and the Court must thereupon require proof to be  
made of the demand mentioned in the complaint;  
and if the defendant be not a resident of the Territory,  
must require the plaintiff or his agent to be examined on  
oath respecting any payments that have been made to  
the plaintiff, or to any one for his use, on account of such  
demand, and may render judgment for the amount which  
he is entitled to recover.

## CHAPTER XXII.

### ISSUES—THE MODE OF TRIAL AND POSTPONEMENTS.

**SECTION 357.** Issue defined, and the different kinds.

358. Issue of law, how raised.

359. Issue of fact, how raised.

360. Issue of law, how tried.

361. Issue of fact, how tried. When issues both of law and fact, the  
former to be first disposed of.

362. Clerk must enter causes on the calendar, to remain until dis-  
posed of.

363. Parties may bring issue to trial.

364. Motion to postpone a trial for absence of testimony, requisites of.

365. In cases of adjournment a party may have the testimony of any  
witness taken.



Issue defined,  
and the differ-  
ent kinds.

SECTION 357. Issues arise upon the pleadings when a fact or a conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

Issue of law,  
how raised.

SEC. 358. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact,  
how raised.

SEC. 359. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and
2. Upon new matters in the answer, except an issue of law is joined thereon.

Issue of law,  
how tried.

SEC. 360. An issue of law must be tried by the Court, unless it is referred upon consent.

Issues by  
whom tried,  
and order of  
trial.

SEC. 361. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where, in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the Court subject to its power to order any such issue to be tried by a jury or to be referred to a referee, as provided in this Code.

Clerk must  
enter causes on  
the calendar, to  
remain until  
disposed of.

SEC. 362. The Clerk must enter causes upon the calendar of the Court according to the date of issue. Causes once placed on the calendar must remain upon the calendar from Court to Court, until finally disposed of; *provided*, that causes may be dropped from the calendar by consent of parties, and may be again restored upon notice.

Parties may  
bring issue to  
trial.

SEC. 363. Either party may bring an issue to trial, or to a hearing, and in the absence of the adverse party, unless the Court, for good cause, otherwise direct, may proceed with his case, and take a dismissal of the action, or a verdict, or judgment, as the case may require.

Motion to post-  
pone a trial for  
absence of tes-  
timony, requi-  
sites of.

SEC. 364. A motion to postpone a trial on the ground of the absence of evidence can only be made upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The Court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

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**SEC. 365.** The party obtaining a postponement of a trial in any Court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a Judge or Clerk of the Court in which the case is pending, or before such Notary Public as the Court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced.

In cases of adjournment a party may have the testimony of any witness taken.

## CHAPTER XXIII.

### TRIAL BY JURY.

**SECTION 366.** Jury, how drawn.

- 367. Challenges. Each party entitled to four peremptory challenges.
- 368. Grounds of challenge.
- 369. Challenges, how tried.
- 370. Jury to be sworn.
- 371. Order of proceeding on trial.
- 372. Charge to the jury. Court must furnish in writing, upon request, the points of law contained therein.
- 373. Special instructions.
- 374. View by jury of the premises.
- 375. Admonition when jury permitted to separate.
- 376. Jury may take with them certain papers.
- 377. Deliberation of jury, how conducted.
- 378. May come into Court for further instructions.
- 379. Proceedings in case a juror become sick.
- 380. When prevented from giving verdict, the cause may be again tried.
- 381. While jury are absent, Court may adjourn from time to time. Sealed verdict. Final adjournment discharges the jury.
- 382. Verdict, how declared. Form of. Polling the jury.
- 383. Proceedings when verdict is informal.
- 384. General and special verdicts defined.
- 385. When a general or special verdict may be rendered.
- 386. Verdict in actions for recovery of money or on establishing counter claim.
- 387. Verdict in actions for the recovery of specific personal property.
- 388. Entry of verdict.

**SECTION 366.** When the action is called for trial by jury, the Clerk must draw from the trial jury box of the Court the ballots containing the names of the jurors, until the jury is completed or the ballots are exhausted.

Jury, how drawn.

**SEC. 367.** Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to four peremptory

Challenges peremptory, how taken.

challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

Grounds of  
challenge.

SEC. 368. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by this Code to render a person competent as a juror;

2. Consanguinity or affinity, within the fourth degree, to any party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or surety on any bond or obligation for either party.

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action ;

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation ;

6. Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or of some of them ;

7. The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

Challenges,  
how tried

SEC. 369. Challenges for cause must be tried by the Court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

Jury to be  
sworn.

SEC. 370. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between —, the plaintiff, and —, defendant, and a true verdict render according to the evidence.

Order of pro-  
ceeding on  
trial.

SEC. 371. When the jury has been sworn, the trial must proceed in the following order, unless the Judge, for special reasons, otherwise directs :

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part ;

2. The defendant may then open his defense, and offer his evidence in support thereof ;

3. The parties may then respectively offer rebutting evidence only, unless the Court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case ;

4. When the evidence is concluded, unless the case Same. is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument ;

5. If several delendants, having separate defenses, appear by different counsel, the Court must determine their relative order in the evidence and argument;

6. The Court may then charge the jury.

SEC. 372. In charging the jury the Court may state Charge to the jury. to them all matters of law which he thinks necessary for their information in giving their verdict ; and, if it state the testimony of the case, it must inform the jury that they are the exclusive judges of all questions of fact.

The Court must furnish to either party, at the time, upon request, a statement in writing of the points of law Court must furnish in writing, upon request, the points of law contained therein. contained in the charge, or sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

SEC. 373. Where either party asks special instructions Special instructions. to be given to the jury, the Court must either give such instruction, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

SEC. 374. When, in the opinion of the Court, it is proper for the jury to have a view of the property which View by jury of the premises. is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

SEC. 375. If the jury are permitted to separate, either during the trial or after the case is submitted to them, Admonition when jury permitted to separate. they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

SEC. 376. Upon retiring for deliberation the jury may take with them all papers which have been received as Jury may take with them certain papers. evidence in the cause, except depositions, or copies of such papers as ought not, in the opinion of the Court, to be taken from the person having them in possession; and

they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Deliberation of jury, how conducted.

SEC. 377. When the case is finally submitted to the jury, they may decide in Court or retire for deliberation. If they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or are discharged by the Court. Unless by order of the Court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

May come into Court for further instructions.

SEC. 378. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into Court. Upon their being brought into Court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Proceedings in case a juror becomes sick.

SEC. 379. If, after the impaneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the Court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

When prevented from giving verdict, the cause may be again tried.

SEC. 380. In all cases where the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the Court may direct.

While jury are absent, Court may adjourn from time to time.

SEC. 381. While the jury are absent the Court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The Court may direct the jury to bring in a sealed verdict, at the opening of the Court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the Court for the term discharges the jury.

Sealed verdict.

Final adjournment discharges the jury.

Verdict, how declared.

SEC. 382. When the jury have agreed upon their verdict, they must be conducted into Court, their names called by the Clerk, and the verdict rendered by their

foreman. The verdict must be in writing, signed by the foreman, and must be read by the Clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the Court or Clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out.

Form of

Polling the jury.

SEC. 383. When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the Court, or the jury may be again sent out.

Proceedings when verdict is informal.

SEC. 384. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law.

General and special verdicts defined.

SEC. 385. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the Court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the Clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the Court must give judgment accordingly.

When a general or special verdict may be rendered.

SEC. 386. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

Verdict in actions for recovery of money or on establishing counter claim.

SEC. 387. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a

Verdict in actions for specific personal property.

Same.

return thereof, the jury, if their verdict be in favor of the plaintiff, or, if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry of verdict.

SEC. 388. Upon receiving a verdict, an entry must be made by the Clerk in the minutes of the Court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

## CHAPTER XXIV.

### TRIAL BY THE COURT.

SECTION 389. When and how trial by jury may be waived.

390. Upon trial by Court decision to be in writing and filed within twenty days.

391. Facts found and conclusions of law must be separately stated. Judgment on.

392. Finding may be waived, how.

393. Proceedings after determination of issue of law.

Trial by jury, when and how waived.

SECTION 389. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or, for the recovery of specific real or personal property, with or without damages, and with the assent of the Court, in other actions, in manner following:

1. By failing to appear at the trial;
2. By written consent, in person or by attorney, filed with the Clerk;
3. By oral consent, in open Court, entered in the minutes;

Decision of court on question of fact, when to be filed.

SEC. 390. Upon a trial of a question of fact by the Court, its decision must be given in writing and filed with the Clerk within twenty days after the cause is submitted for decision.

Facts found and conclusions of law must be separately stated. Judgment on. Findings may be waived, how.

SEC. 391. In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

SEC. 392. Findings of fact may be waived by the several parties to an issue of fact:

1. By failing to appear at the trial;

4403  
2 W.A. 509

2. By consent in writing, filed with the Clerk;
3. By oral consent in open Court, entered in the minutes.

**SEC. 393.** On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of Section 356 upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the Court to complete the judgment, a reference may be ordered, as in that section provided.

Proceedings after determination of issue of law.

## CHAPTER XXV.

### OF REFERENCES AND TRIALS BY REFEREES.

**SECTION 394.** Reference ordered upon agreement of parties, in what cases.

395. Reference ordered on motion, in what cases.
396. Number of referees, qualifications, etc.
397. Either party may object. Grounds of objection.
398. Objections, how disposed of.
399. Referees to report within twenty
400. Effect of referee's finding.
401. How excepted to, etc.

**SECTION 394.** A reference may be ordered upon the agreement of the parties filed with the Clerk, or entered in the minutes:

Reference ordered upon agreement of parties, in what cases.

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;
2. To ascertain a fact necessary to enable the Court to determine an action or proceeding.

**SEC. 395.** When the parties do not consent, the Court may, upon the application of either, or of its own motion, direct a reference in the following cases:

Reference ordered on motion, in what cases.

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein;
2. When the taking of an account is necessary for the information of the Court before judgment, or for carrying a judgment or order into effect;
3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action;



4. When it is necessary for the information of the Court in a special proceeding.

Number of referees, qualifications, etc.

SEC. 396. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the Court or Judge must appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

Either party may object.

SEC. 397. Either party may object to the appointment of any person as referee, on one or more of the following grounds:

Grounds of objection.

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity, within the third degree, to either party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party;

4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action.

5. Interest on the part of such person in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, how disposed of.

SEC. 398. The objections taken to the appointment of any person as referee must be heard and disposed of by the Court. Affidavits may be read and witnesses examined as to such objections.

Referees to report within twenty days.

SEC. 399. The referees must report their findings in writing to the Court within twenty days after the testimony is closed, and the facts found and conclusions of law must be separately stated therein.

Effect of referee's finding.

SEC. 400. The finding of the referee upon the whole issue must stand as the finding of the Court, and upon filing of the finding with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the Court.

How excepted to, etc.

SEC. 401. The findings of the referee may be excepted to and reviewed in like manner as if made by the Court. When the reference is to report the facts, the finding reported has the effect of a special verdict.



## CHAPTER XXVI.

## EXCEPTIONS.

- SECTION 402. Exceptions may be taken. Time when taken, etc.  
 403. What deemed excepted to.  
 404. Exception, form of.  
 405. Exceptions signed by Judge and filed with Clerk.  
 406. Exceptions not presented at time of ruling. Notice to adverse party, how settled upon, etc.  
 407. Exceptions after judgment, etc.  
 408. When exception is refused, application to Supreme Court to prove the same, etc.  
 409. Proceedings where Judge ceases to hold office.

SECTION 402. An exception is an objection upon a matter of law to a decision made either before or after judgment, by a Court, tribunal, Judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in the next section.

SEC. 403. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application, and an order or decision made in the absence of a party, are deemed to have been excepted to.

SEC. 404. No particular form of exception is required. But when the exception is to the verdict or decision, upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto, sufficient to identify them may be made.

SEC. 405. A bill containing the exception to any decision may be presented to the Court or Judge for settlement at the time the decision is made, and after having been settled, shall be signed by the Judge and filed with the Clerk. When the decision excepted to is made by

a tribunal other than a Court, or by a judicial officer, the bill of exceptions shall be presented to, and settled and signed by such tribunal or officer.

Bill of exceptions, preparation and settlement of.

SEC. 406. When a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service, the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill, to the Judge who tried or heard the case, upon five days notice to the adverse party, or be delivered to the clerk of the Court for the Judge. When received by the clerk, he must immediately deliver them to the Judge, if he be in the county; if he be absent from the county, and either party desire the papers to be forwarded to the Judge, the clerk must, upon notice in writing of such party, immediately forward them by mail, or other safe channel; if not thus forwarded, the clerk must deliver them to the Judge immediately after his return to the county. When received from the clerk, the Judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated, the Judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the Judge or referee, for settlement without notice to the adverse party. It is the duty of the Judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

Action before referee.

**SEC. 407.** Exceptions to any decision made after judgment may be presented to the Judge at the time of such decision, and be settled or noted, as provided in Sec. 405, and a bill thereof may be presented and settled afterwards, as provided in Sec. 406, and within like periods after entry of the order, upon appeal, from which such decision is reviewable. Exceptions after judgment, etc.

**SEC. 408.** If the Judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same. The application may be made in the mode and manner, and under such regulations as that Court may prescribe; and the bill, when proven, must be certified by a Justice as correct, and filed with the Clerk of the Court in which the action was tried, and when so filed it has the same force and effect as if settled by the Judge who tried the cause. When exception is refused, application to Supreme Court to prove the same, etc.

**SEC. 409.** When the decision excepted to was made by any judicial officer other than a Judge, the bill of exceptions shall be presented to such judicial officer and be settled and signed by him, in the same manner as it is required to be presented to, settled, and signed by a Court or Judge. A Judge or judicial officer may settle and sign a bill of exceptions after as well as before he ceases to be such Judge or judicial officer. If such Judge or judicial officer, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the Supreme Court may, by its order or rules, direct. Judges, judicial officers, and the Supreme Court shall respectively possess the same power, in settling and certifying statements, as is by this section conferred upon them in settling and certifying bills of exceptions. Proceedings where Judge ceases to hold office, etc.

## CHAPTER XXVII.

### NEW TRIALS.

- SECTION 410.** New trial defined.
- 411. When a new trial may be granted.
  - 412. On what papers moved for.
  - 413. Notice of motion, upon whom served and what to contain.
  - 414. Motion to be heard.
  - 415. Record on appeal.
  - 416. New trial ordered by Court.
  - 417. Motion, when heard.

New trial  
defined.

SECTION 410. A new trial is a re-examination of an issue of fact in the same Court after a trial and decision by a jury or Court, or by referees.

When a new  
trial may be  
granted.

SEC. 411. The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the Court, jury, or adverse party, or any order of the Court or abuse of discretion by which either party was prevented from having a fair trial;

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the Court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law, occurring at the trial and excepted to by the party making the application.

On what papers  
moved.

SEC. 412. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it must be made upon affidavits; for any other cause it may be made, at the option of the moving party, either upon the minutes of the Court, or a bill of exceptions, or a statement of the case, prepared as hereinafter provided.

No'ice of inten-  
tion, when to  
be filed and  
what to con-  
tain.

SEC. 413. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case;

On affidavits.

1. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the

notice, or such further time as the Court in which the action is pending, or a Judge thereof may allow, file such affidavit with the Clerk, and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party.

2. If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions, as is provided after the entry of judgment, or after receiving notice of such entry by Sec. 406, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion; On bill of exceptions.

3. If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the Court in which the action is pending, or the Judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the Judge who tried or heard the cause, for settlement, or be delivered to the Clerk of the Court for the Judge. If not adopted, the proposed statement and amendments, shall, within ten days thereafter, be presented by the moving party to the Judge, upon five days notice to the adverse party, or delivered to the Clerk of the Court for the Judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and Clerk, and Judge, as are required for the settlement of bills of exception by Sec. 406. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the Judge or referee, for settlement, without notice to the adverse party. When the notice of the motion designates as the ground of the motion, the insufficiency of the evidence to jus- On statement.

Same.

tify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion, errors in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the Judge or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the Clerk.

On minutes of court.

4. When the motion is to be made upon the minutes of the Court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial, and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the Court, the motion must be denied.

Motion when to be heard.

SEC. 414. The application for a new trial shall be heard at the earliest practicable period after notice of the motion, if the motion is to be heard upon the minutes of the Court, and in other cases, after the affidavits, bill of exceptions, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the Court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

What constitutes record to be used on appeal.

SEC. 415. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the Court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the

record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the Court in which the action is pending, or a Judge thereof, may allow, and the same or a copy thereof be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same, or a copy thereof, upon the party appealing, or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by Sec. 413, but the statement shall only contain the grounds argued before the Court for a new trial, and so much of the evidence or other matter as may be necessary to explain them; and it shall be the duty of the Judge to exclude all other evidence or matter from the statement.

SEC. 416. The verdict of a jury may also be vacated, and a new trial granted by the Court, in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the Court, or the evidence in the case, as to satisfy the Court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice. The order of the Court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the Court, as provided in Sec. 415.

SEC. 417. When the action is tried by a District Judge in his district, out of the county of his residence, the motion for a new trial may, upon the consent of parties, be brought to hearing before such Judge at chambers, or in open Court, in the county of his residence, or in any other county.

## CHAPTER XXVIII.

### MANNER OF GIVING AND ENTERING JUDGMENT.

SECTION 418. Judgment to be entered in twenty-four hours, etc.

419. Case may be brought before the Court for argument.

420. When counter claim established exceeds plaintiff's demand.

421. In replevin, judgment to be in the alternative, and with damages. Gold coin or currency judgment.

422. Judgment book to be kept by the Clerk.



- 423. If a party die after verdict judgment may be entered, but not to be a lien.
- 424. Judgment roll, what to constitute.
- 425. Judgment lien, when it begins and when it expires.
- 426. Docket, how kept, and what to contain.
- 427. Docket to be open to inspection without charge.
- 428. Transcript to be filed in any county, and judgment to become a lien there.
- 429. Satisfaction of a judgment, how made

Judgment to be entered in twenty-four hours, etc.

SECTION 418. When trial by jury has been had, judgment must be entered by the Clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the Court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Case may be brought before the Court for argument.

SEC. 419. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the Court for argument.

When counter claim established exceeds plaintiff's demand.

SEC. 420. If a counter claim, established at the trial, exceed the plaintiff's demand, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

In replevin, judgment to be in the alternative, and with damages.

SEC. 421. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery can not be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another,

Gold coin or currency judgment.



judgment for the plaintiff must be made payable in the kind of money or currency so received by such a person.

SEC. 422. The Clerk must keep, with the records of the Court, a book to be called the "judgment book," in which judgments must be entered.

Judgment book to be kept by the Clerk.

SEC. 423. If a party die after a verdict or decision upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

If a party die after verdict judgment may be entered, but not to be a lien.

SEC. 424. Immediately after entering the judgment, the Clerk must attach together and file the following papers, which constitute the judgment roll:

Judgment roll what constitutes.

1. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment;

2. In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the Court, or referee, all bills of exceptions taken and filed, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

SEC. 425. Immediately after filing a judgment roll, the Clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until the lien expires. The lien continues for two years unless the judgment be previously satisfied.

Judgment lien, when it begins and when expires.

SEC. 426. The docket mentioned in the last section is a book which the Clerk keeps in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment—time of entry; where entered in judgment book; appeals—when taken; judgment of appellate Court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the

Docket, how kept, and what to contain.

judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

Docket to be open for inspection without charge.

SEC. 427. The docket kept by the Clerk is open at all times, during office hours, for the inspection of the public, without charge. The Clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript to be filed in any county, and judgment to become a lien there.

SEC. 428. A transcript of the original docket, certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied.

Satisfaction of judgment, how made.

SEC. 429. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment a conveyance of real property, by the judgment creditor, or by his indorsement on the face, or, on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such indorsement, and, upon motion, the Court may compel it, or may order the entry of satisfaction to be made without it.

## CHAPTER XXIX.

### THE EXECUTION.

SECTION 430. Within what time execution may issue.

431. Who may issue the execution, its form, to whom directed, and what it shall require.

432. When made returnable.

433. Money judgments and others, how enforced.

434. Execution after five years.

435. When execution may issue against the property of a party after his death.

436. Execution, how and to whom issued.

437. What shall be liable to be seized in execution. Not to be affected till a levy is made.

438. When property is claimed by a third party, how the right of property is tried.

- 439. Married woman.
- 440. What exempt from execution.
- 441. Writ, how executed.
- 442. Notice of sale under execution how given.
- 443. Selling without notice, what penalty attached.
- 444. Sales, how conducted.
- 445. If purchaser refuses to pay purchase money, what proceedings.
- 446. Officer may refuse bid.
- 447. These two sections not to make officer liable beyond a certain amount.
- 448. Personal property capable of manual delivery, how delivered to purchaser.
- 449. Personal property not capable of manual delivery, how sold and delivered.
- 450. Real property, when absolute sale or not. In the latter case, what the certificate must contain.
- 451. Real property so sold, by whom it may be redeemed.
- 452. When it may be redeemed, and redemption money.
- 453. When judgment debtor or other redemptioner may redeem.
- 454. In cases of redemption, to whom the payments are to be made.
- 455. What a redemptioner must do in order to redeem.
- 456. Until the expiration of redemption time Court may restrain waste on the property. What considered waste.
- 457. Rents and profits.
- 458. If purchaser of real property be evicted for irregularities in sale, what he may recover, and from whom.
- 459. Party who pays more than his share may compel contribution.

**SECTION 430.** The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement. Within what time execution may issue.

**SEC. 431.** The writ of execution must be issued in the name of the people, sealed with the seal of the Court, and subscribed by the Clerk, and be directed to the Sheriff, and it must intelligibly refer to the judgment, stating the Court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in Section 421, the execution must also state the kind of money or currency in which the judgment is payable, and must require the Sheriff substantially as follows: Who may issue the execution, its form, to whom directed, and what it shall require.

1. If it be against the property of the judgment debtor, it must require the Sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the trans-

Same.

cript of the docket was filed in the office of the Recorder of such county, stating such day, or any time thereafter.

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the Sheriff to satisfy the judgment, with interest, out of such property;

3. If it be against the person of the judgment debtor, it must require the Sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law;

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in Section 421, it must also require the Sheriff to satisfy the same in the kind of money or currency in which the judgment is made payable, and the Sheriff must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The Sheriff collecting money or currency in the manner required by this Chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected;

5. If it be for the delivery of the possession of real or personal property, it must require the Sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

When made  
returnable.

SEC. 432. The execution may be made returnable, at any time not less than ten nor more than sixty days after its receipt by the Sheriff, to the Clerk with whom the judgment roll is filed. When the execution is returned, the Clerk must attach it to the judgment roll. If any real estate be levied upon, the Clerk must record the execution and the return thereto at large, and certify the

same under his hand as true copies, in a book to be <sup>Same.</sup> called the "execution book," which book must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they, or any part thereof, may be destroyed or mutilated.

SEC. 433. When the judgment is for money, or the <sup>Judgment</sup> possession of real or personal property, the same may be <sup>what may</sup> enforced by a writ of execution; and if the judgment <sup>direct—</sup> direct that the defendant be arrested, the execution may <sup>Arrest of</sup> issue against the person of the judgment debtor, after <sup>defendant</sup> the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the Court.

SEC. 434. In all cases other than for the recovery of <sup>Execution</sup> money, the judgment may be enforced or carried into ex- <sup>after five</sup> <sup>years.</sup> ecution after the lapse of five years from the date of its entry, by leave of the Court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings.

SEC. 435. Notwithstanding the death of a party after <sup>When execu-</sup> the judgment, execution thereon may be issued, or it <sup>tion may issue</sup> may be enforced, as follows: <sup>against the</sup> <sup>property of a</sup> <sup>party after</sup> <sup>his death.</sup>

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

SEC. 436. Where the execution is against the prop- <sup>Execution,</sup> erty of the judgment debtor, it may be issued to the <sup>how and to</sup> Sheriff of any county in the Territory. Where it re- <sup>whom issued.</sup> quires the delivery of real or personal property, it must be issued to the Sheriff of the county where the property, or some part thereof, is situated. Executions may be issued, at the same time, to different counties.

What shall  
be liable to  
be seized in  
execution.

SEC. 437. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachments. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

Not to be  
affected till a  
levy is made.

When property  
is claimed by a  
third party,  
how the right  
of property is  
tried.

SEC. 438. If the property levied on be claimed by a third person as his property, the Sheriff may summon from his county six persons qualified as jurors, between the parties, to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the Sheriff, and if their verdict be in favor of the claimant the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff, and the witnesses must be paid by the claimant, if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the Sheriff, before the trial, the amount of his fees, and the fees of the jury, and the Sheriff must pay the same to the prevailing party.

Property of  
married  
woman exempt  
from execu-  
tion.

SEC. 439. All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

What exempt  
from execu-  
tion.

SEC. 440. The following property is exempt from execution, except as herein otherwise specially provided;

1. Chairs, tables, desks, and books, to the value of two hundred dollars, belonging to the judgment debtor;
2. Necessary household, table, and kitchen furniture belonging to the judgment debtor, including one sewing machine, in actual use in a family, or belonging to a woman; stoves, stovepipe, and stove furniture, wearing apparel, beds, bedding and bedsteads, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their

necessary frames, provisions, actually provided for individual or family use, sufficient for three months; two cows, with their sucking calves, and two hogs, with their sucking pigs; Same.

3. The farming utensils or implements of husbandry of a farmer, not exceeding in value the sum of three hundred dollars; also, two oxen or two horses, or two mules and their harness, one cart or wagon, and food for such oxen, horses, or mules, for one month; also, all seed grain or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars;

4. Tools or implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of five hundred dollars; the notarial seal and records of a Notary Public; the instruments and chest of a surgeon, physician, surveyor and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law professional libraries and office furniture of attorneys, counselors, and Judges, and the libraries of ministers of the gospel;

5. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools not exceeding in value two hundred dollars.

6. Two oxen, two horses, or two mules, and their harness; and one cart or wagon, one dray or truck, by the use of which a cartman, drayman, truckman, buckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness, or other equipments, used by a physician, surgeon, or minister of the gospel, in making his professional visits, with food for such oxen, horses, or mules for one month;

7. The earnings of the judgment debtor for his personal services, rendered at any time within thirty days next preceding the levy of execution, or levy of attachment, when it appears, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in this Territory, supported wholly or in part by his labor;

8. The shares held by a member of a homestead association duly incorporated, not exceeding in value one thousand dollars—if the person holding the share is not the owner of a homestead under the laws of this Territory;

9. All moneys, benefits, privileges, or immunities



Same.

accruing, or in any manner growing out of any life insurance on the life of the debtor, to an amount represented by an annual premium not exceeding two hundred and fifty dollars;

10. All fire engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this Territory;

11. All arms, uniforms, and accouterments required by law to be kept by any person; also one gun;

12. All Court Houses, Jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the Court House, Jail, and public offices belonging to any county of this Territory, and all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this Territory; but no article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Writ, how executed.

SEC. 441. The Sheriff must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs, must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the Court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the Sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Notice of sale, how given

SEC. 442. Before the sale of the property on execution, notice thereof must be given, as follows:

1. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct or city where the sale is to take



place, for such time as may be reasonable, considering same. the character and condition of the property;

2. In case of other personal property, by posting a similar notice in three public places in the precinct or city where the sale is to take place, for not less than five nor more than ten days;

3. In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period, in some newspaper published in the county, if there be one;

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

SEC. 443. An officer selling without the notice prescribed by the last section forfeits five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits five hundred dollars. Selling without notice what penalty attached.

SEC. 444. All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions. Sales how conducted. Neither the officer conducting it nor his deputy to be a purchaser. Real and personal property, how sold. Judgment debtor, if present, may direct order of sale, and the officer shall follow his directions.

Proceedings on refusal of purchaser to pay purchase money.

SEC. 445. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

When sheriff may refuse bid.

SEC. 446. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

These two sections not to make officer liable, etc.

SEC. 447. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Personal property capable of manual delivery, how delivered to purchaser.

SEC. 448. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Personal property not capable of manual delivery, how sold and delivered.

SEC. 449. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Real property, when absolute sale or not.

SEC. 450. Upon a sale of real property, the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in this Chapter. The officer must give to the purchaser a certificate of sale, containing:

In the latter case, what the certificate must contain.

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it must be so stated.

And when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the

judgment. A duplicate of such certificate must be filed by the officer in the office of the Recorder of the county.

SEC. 451. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

Real property so sold, by whom it may be redeemed.

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;

2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this Chapter, termed redemptioners.

SEC. 452. The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with twelve per cent. thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

When it may be redeemed, and redemption money.

SEC. 453. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, and within six months after the sale, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, and within six months after the sale, on paying the sum paid on the last previous redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his

When judgment debtor or other redemptioner may redeem.

Notice of redemption.

Sheriff's deed.

own, with interest. Written notice of redemption must be given to the Sheriff, and a duplicate filed with the Recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the Sheriff, and filed with the Recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereon given, the time for redemption by a redemptioner, has expired, and the last redemptioner, or his assignee, is entitled to a Sheriff's deed at the expiration of six months after the sale; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the Recorder of the county in which the property is situated, and the Recorder must note the record thereof in the margin of the record of the certificate of sale.

In the case of redemption, to whom the payments are to be made.

SEC. 454. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

What a redemptioner must do in order to redeem.

SEC. 455. A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the Sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, or Recorder of the county where the judgment is docketed or filed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the Recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

SEC. 456. Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

Until the expiration of redemption time, Court may restrain waste on the property.

What considered waste.

SEC. 457. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser, or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within sixty days after said demand, bring an action in any Court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

Rents and profits.

If purchaser of real property be evicted for irregularities in sale, what he may recover and from whom.

When judgment to be revived.

Petition for the purpose how and by whom made.

Party who pays more than his share may compel contribution

**SEC. 458.** If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

**SEC. 459.** When upon an execution against several persons more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the Clerk of the Court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the Clerk must make an entry thereof in the margin of the docket.

## CHAPTER XXX.

### PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

**SECTION 460.** Debtor required to answer concerning his property, when.

461. Proceedings to compel debtor to appear. In what cases he may be arrested. What bail may be given.

462. Any debtor of the judgment debtor may pay the latter's creditor.

463. Examination of debtors of judgment debtor, or of those having property belonging to him.

464. Witness required to testify.



SECTION 465. Judge may order property to be applied on execution.

466. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

467. Disobedience of orders, how punished.

SECTION. 460. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Sheriff of the county where he resides, or, if he do not reside in this Territory, to the Sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the Judge of the Court, requiring such judgment debtor to appear and answer concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a Judge or referee out of the county in which he resides.

Debtor required to answer concerning his property, when.

SEC. 461. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the Court, or of a Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court or Judge may, by an order, require the judgment debtor to appear at a specified time and place before such Judge, or a referee appointed by him to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge or referee, as may be directed, during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

Proceedings to compel debtor to appear.

In what cases he may be arrested.

What bail may be given.

SEC. 462. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the Sheriff the amount

Any debtor of the judgment debtor may pay the latter's creditor.

of his debt, or so much thereof as may be necessary to satisfy the execution; and the Sheriff's receipt is a sufficient discharge for the amount so paid.

Examination  
of debtors of  
judgment debt-  
or, or of those  
having proper-  
ty belonging to  
him.

SEC. 463. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, or upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Witness requir-  
ed to testify.

SEC. 464. Witnesses may be required to appear and testify before the Judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

509-11 Judge may or-  
der property to  
be applied on  
execution.

SEC. 465. The Judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

9-11 Proceedings  
upon claim of  
another party  
to property, or  
on denial of in-  
debtedness to  
judgment  
debtor.

SEC. 466. If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the Court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt; and the Court or Judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the Court in which the action is brought, at any time, upon such terms as may be just.

02-11 Disobedience  
of orders, how  
punished.

SEC. 467. If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this Chapter, he may be punished by the Court or Judge ordering the reference, for a contempt.



## CHAPTER XXXI.

## ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

SECTION 468. Proceedings in foreclosure suits.

469. Surplus money to be deposited in Court.

470. Proceedings when debt secured falls due at different times.

SECTION 468. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this Chapter. In such action, the Court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of the Court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under execution; and if it appear from the Sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

SEC. 469. If there be surplus money remaining, after payment of the amount due on the mortgage, lien or incumbrance, with costs, the Court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in Court.

SEC. 470. If the debt for which the mortgage, lien, or incumbrance is held is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due, for principal or interest, the Court may, on motion, order more to be sold. But if the

property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

## CHAPTER XXXII.

### ACTIONS FOR NUISANCE, WASTE, AND WILLFUL TRESPASS, IN CERTAIN CASES, ON REAL PROPERTY.

SECTION 471. Nuisance defined, and actions for.

472. Waste, actions for.

473. Trespass for cutting or carrying away trees, etc., actions for.

474. Measure of damages in certain cases under the last section.

475. Damages in actions for forcible entry, etc., may be trebled.

Nuisance defined, and actions for.

SECTION 471. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Waste, actions for.

SEC. 472. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass for cutting or carrying away trees, etc., actions for.

SEC. 473. Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any Court having jurisdiction.

Measure of damages in certain cases under the last section.

SEC. 474. Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

**SEC. 475.** If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

Damages in actions for forcible entry etc., may be trebled.

## CHAPTER XXXIII.

### ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

**SECTION 476.** Parties to an action to quiet title.

477. When plaintiff cannot recover costs.

478. If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

479. When value of improvements can be allowed as a set-off.

480. An order may be made to allow a party to survey and measure the land in dispute.

481. Order, what to contain, and how served. If unnecessary injury done, the party surveying to be liable therefor.

482. A mortgage must not be deemed a conveyance, whatever its terms.

483. When Court may grant injunction; during foreclosure; after sale on execution, before conveyance.

484. Damages may be recovered for injury to the possession after sale and before delivery of possession.

485. Action not to be prejudiced by alienation, pending suit.

486. Mining claims, actions concerning to be governed by local rules.

**SECTION 476.** An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim.

Parties to an action to quiet title.

**SEC. 477.** If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

When plaintiff cannot recover costs.

**SEC. 478.** In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

**SEC. 479.** When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the

When value of improvements can be allowed as a set-off.

value of such improvements must be allowed as a set-off against such damages.

An order may be made to allow a party to survey and measure the land in dispute.

SEC. 480. The Court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a Judge thereof, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts, or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order what to contain and how served. If unnecessary injury done, the party surveying to be liable therefor.

SEC. 481. The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

A mortgage must not be deemed a conveyance, whatever its terms.

SEC. 482. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

When Court may grant injunction; during foreclosure; after sale on execution, before conveyance.

SEC. 483. The Court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

Damages may be recovered for injury to the possession after sale, etc.

SEC. 484. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

Action not to be prejudiced by alienation pending suit.

SEC. 485. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Mining claims, actions concerning to be governed by local rules.

SEC. 486. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, must govern the decision of the action.

## CHAPTER XXXIV.

## ACTIONS FOR THE PARTITION OF REAL PROPERTY.

**SECTION 487. Who may bring actions for partition.**

- 488. Interests of all parties must be set forth in the complaint.
- 489. Lienholders not of record need not be made parties.
- 490. Plaintiff must file notice of *lis pendens*.
- 491. Summons must be directed to all persons interested in the property.
- 492. Unknown parties may be served by publication.
- 493. Answer of defendants, what to contain.
- 494. The rights of all parties may be ascertained in the action.
- 495. Partial partition.
- 496. Lienholders must be made parties, or a referee be appointed to ascertain their rights.
- 497. Lienholders must be notified to appear before the referee appointed.
- 498. The Court may order a sale or partition and appoint referees therefor.
- 499. Partition must be made according to the rights of the parties, as determined by the Court.
- 500. Referees must make a report of their proceedings.
- 501. The Court may set aside or affirm report, and enter judgment thereon. Upon whom judgment to be conclusive.
- 502. Judgment not to affect tenants for years to the whole property.
- 503. Expenses of partition must be apportioned among the parties.
- 504. A lien on an undivided interest of any party is a charge only on the share assigned to such party.
- 505. Estate for life or years may be set off in a part of the property not sold, when not all sold.
- 506. Application of proceeds of sale of incumbered property.
- 507. Party holding other securities may be required first to exhaust them.
- 508. Proceeds of sale, disposition of.
- 509. When paid into Court the cause may be continued for the determination of the claims of the parties.
- 510. Sales by referees must be at public auction.
- 511. The Court must direct the terms of sale or credit.
- 512. Referees may take securities for purchase money.
- 513. Tenants whose estate has been sold shall receive compensation.
- 514. The Court may fix such compensation.
- 515. The Court must protect tenants unknown.
- 516. The Court must ascertain and secure the value of future contingent or vested interests.
- 517. Terms of sale must be made known at the time. Lots must be sold separately.
- 518. Who may not be purchasers.
- 519. Referees must make a report of the sale to the Court.
- 520. If confirmed, conveyances may be executed.
- 521. Proceeding if a lienholder become a purchaser.
- 522. Conveyances must be recorded and will be a bar against parties.
- 523. Proceeds of sale belonging to parties unknown must be invested for their benefit.

**SECTION 524.** Investment must be made in the name of the Recorder of the county.

**525.** When the interests of the parties are ascertained, securities must be taken in their names.

**526.** Duties of making investments.

**527.** When unequal partition is ordered, compensation may be adjudged in certain cases.

**528.** The shares of an infant may be paid to his guardian.

**529.** The guardian of an insane person may receive the proceeds of such party's interest.

**530.** A guardian may consent to partition without action, and execute releases.

**531.** Costs of partition a lien upon the shares of the parceners.

**532.** The Court, by consent, may appoint a single referee.

**533.** Abstract of title.

Who may  
bring actions  
for partition.

**SECTION 487.** When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a petition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

Interests of all  
parties must be  
set forth in the  
complaint.

**SEC. 488.** The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

Lienholders  
not of record  
need not be  
made parties.

**SEC. 489.** No person having a conveyance of or claiming a lien on the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Plaintiff must  
file notice of  
his pendency.

**SEC. 490.** Immediately after filing the complaint in the District Court, the plaintiff must file with the Recorder of the county, or of the several counties in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

**Sec. 491.** The summons must be directed to all the joint tenants and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise upon the property, or upon any particular portion thereof; and generally, to all persons unknown who have or claim any interest in the property.

Summons must be directed to all persons interested in the property.

**Sec. 492.** If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

Unknown parties may be served by publication.

**Sec. 493.** The defendants who have been personally served with the summons and a copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon; also, whether the same has been secured in any other way or not; and if secured, the nature and extent of such security, or they are deemed to have waived their right to such lien.

Answer of defendants, what to contain.

**Sec. 494.** The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action; and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the Court, before the judgment of sale can be made; and where service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

The rights of all parties may be ascertained in the action.

**Sec. 495.** Whenever from any cause it is, in the opinion of the Court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the Court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-

Partial partition.



Same.

tenants were the parties, and sole parties, in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

Lienholders must be made parties, or a referee be appointed to ascertain their rights.

SEC. 496. If it appears to the Court, by the certificate of the County Recorder or Clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the Court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Lienholders must be notified to appear before the referee appointed.

SEC. 497. The plaintiff must cause a notice to be served, a reasonable time previous to the day for appearance before the referee appointed as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the amount due or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the Court, in such manner as may be proper. The report of the referee thereon must be made to the Court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

The Court may order a sale or partition and appoint referees therefor.

SEC. 498. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the Court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the Court may order a sale



thereof. Otherwise, upon the requisite proofs being made, it must order a partition, according to the respective rights of the parties, as ascertained by the Court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

SEC. 499. In making the partition the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the Court, pursuant to the provisions of this Chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Partition must be made according to the rights of the parties as determined by the Court.

SEC. 500. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust, and describing the property divided, and the shares allotted to each party, with a particular description of each share.

Referees must make a report of their proceedings.

SEC. 501. The Court may confirm, change, modify or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive.

The Court may set aside or affirm report, and enter judgment thereon.

1. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life;

Upon whom judgment to be conclusive.

2. On all persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

3. On all other persons claiming from such parties or persons or either of them.

And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent, as if it had been entered before his death.

SEC. 502. The judgment does not affect tenants for years less than ten to the whole of the property which is the subject of the partition.

Judgment not to affect tenants for years to the whole property.

Expenses of partition must be apportioned among the parties

SEC. 503. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the Court, and the amount thereof, together with the fees allowed by the Court, in its discretion, to the referees, must be apportioned among the different parties to the action, equitably.

A lien on an undivided interest of any party is a charge only on the share assigned to such party.

SEC. 504. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life or years may be set off in a part of the property not sold, when not all sold.

SEC. 505. When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of proceeds of sale of incumbered property.

SEC. 506. The proceeds of the sale of incumbered property must be applied under the direction of the Court, as follows:

1. To pay its just proportion of the general costs of the action.
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.
4. The residue among the owners of the property sold, according to their respective shares therein.

Party holding other securities may be required first to exhaust them.

SEC. 507. Whenever any party to an action, who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the Court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just reduction to be made from the amount of the lien on the property, on account thereof.

Proceeds of sale, disposition of.

SEC. 508. The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the Court so directs. But in case no direction be given, all of such proceeds and securities must be paid into Court, or deposited therein, or as directed by the Court.

When paid into Court the cause may be continued for the determination of the claims of the parties

SEC. 509. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into Court, the action may be continued as between such parties, for the determination of their respective claims thereto, which

must be ascertained and adjudged by the Court. Same. Further testimony may be taken in Court, or by a referee, at the discretion of the Court, and the Court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action.

SEC. 510. All sales of real property, made by referees, Sales by referees must be at public auction. under this Chapter, must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

SEC. 511. The Court must, in the order for sale, The Court must direct the terms of sale or credit. direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the Territory.

SEC. 512. The referees may take separate mortgages Referees may take securities for purchase money. and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the Court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the Clerk of the Court and his successors in office.

SEC. 513. The person entitled to a tenancy for life, or years, whose estate has been sold, is entitled to receive Tenants whose estate has been sold shall receive compensation. such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the Clerk of the Court. Upon the filing of such consent, the Clerk must enter the same in the minutes of the Court.

SEC. 514. If such consent be not given, filed, and entered as provided in the last section, at or before a judgment of sale is rendered, the Court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in Court for him, as the case may require. The Court may fix such compensation.

The Court must protect tenants unknown.

SEC. 515. If the person entitled to such estate for life or years be unknown, the Court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

The Court must ascertain and secure the value of future contingent or vested interests.

SEC. 516. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the Court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale must be made known at the time. Lots must be sold separately.

SEC. 517. In all cases of sales of property the terms must be made known at the time; and if the premises consist of distinct farms or lots, they must be sold separately.

Who may not be purchasers.

SEC. 518. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

Referees must make a report of the sale to the Court.

SEC. 519. After completing a sale of the property, or any part thereof ordered to be sold, the referees must report the same to the Court, with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the Clerk.

If confirmed, conveyances may be executed.

SEC. 520. If the sale be confirmed by the Court an order must be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Proceeding if a lienholder become a purchaser.

SEC. 521. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyances must be recorded and will be a bar against parties.

SEC. 522. The conveyances must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown,

if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

SEC. 523. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same must be invested in securities at interest for the benefit of the persons entitled thereto.

Proceeds of sale belonging to parties unknown must be invested for their benefit.

SEC. 524. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the Recorder of the county where the papers are filed, and his successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the Court.

Investment must be made in the name of.

SEC. 525. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the Court, such securities must be taken in the names of and payable to the parties respectively entitled thereto, and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the Clerk.

When the interests of the parties are ascertained, securities must be taken in their names.

SEC. 526. The Recorder in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the Court may direct; and must deposit with the County Treasurer all securities taken, and keep an account in a book provided and kept for that purpose, in the Recorder's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Duties of making investments.

SEC. 527. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the Court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby.

When unequal partition is ordered, compensation may be adjudged in certain cases.

And in all cases the Court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

The share of an infant may be paid to his guardian.

SEC. 528. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the Court.

The guardian of an insane person may receive the proceeds of such party's interest.

SEC. 529. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a Judge of the Court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

A guardian may consent to partition without action, and execute releases.

SEC. 530. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the Court.

Costs of partition a lien upon the shares of the partners.

SEC. 531. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the Court may require the expense of such litigation to be paid by the parties thereto, or any of them.

SEC. 532. The Court, with the consent of the parties, may appoint a single referee, instead of three referees, in



the proceedings under the provisions of this Chapter; and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

The Court, by consent, may appoint a single referee.

SEC. 533. If it appears to the Court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any one of the defendants shall have had such abstract afterwards made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

Abstract of title.

## CHAPTER XXXV.

### ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION 534. Certain writ abolished.

535. Action may be brought against any party usurping, etc., any office or franchise.

536. Name of person entitled to office may be set forth in the complaint. If fees have been received by the usurper, he may be arrested.

537. Judgment may determine the rights of both incumbent and claimant.

538. When rendered in favor of applicant.

[ 539. Damages may be recovered by successful applicant.

540. When several persons claim the same office their rights may be determined by a single action.

541. If defendant found guilty, what judgment to be rendered against him.

542. Undertaking.

SECTION 534. The writ of scire facias is abolished.

Certain writ abolished.

SEC. 535. An action may be brought by the District Attorney in the name of the people of the United States of the Territory of Idaho upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this Territory. And the District Attorney must bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the Governor.

Action may be brought against any party usurping, etc., any office or franchise.

Name of person entitled to office may be set forth in the complaint.

If fees have been received by the usurper he may be arrested.

Judgment may determine the rights of both incumbent and claimant

When rendered in favor of applicant.

Damages may be recovered by successful applicant.

When several persons claim the same office, etc.

If defendant found guilty, what judgment to be rendered against him.

Undertaking, when required in actions for usurpation.

SEC. 536. Whenever such action is brought, the District Attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a Justice of the Supreme Court, or a District Judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

SEC. 537. In every such action judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice may require.

SEC. 538. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he will be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

SEC. 539. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

SEC. 540. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

SEC. 541. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment must be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The Court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the Treasury of the Territory.

SEC. 542. When the action is brought upon the information or application of a private party, the District Attorney may require such party to enter into an undertaking, with sureties to be approved by the District



Attorney, conditioned that such party, or the sureties, will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

## CHAPTER XXXVI.

### OF PROCEEDINGS IN PROBATE AND JUSTICES' COURTS.

**SECTION 543. Action when commenced.**

- 544. Place of trial may be changed in certain cases.
- 545. Limitation on the right to change.
- 546. To what Court transferred.
- 547. Proceedings after order changing place of trial.
- 548. Effect of an order changing place of trial.
- 549. Transfer of cases to the District Court.
- 550. Actions, how commenced.
- 551. Summons may issue within a year.
- 552. Defendant may waive summons.
- 553. Parties may appear in person or by attorney.
- 554. When guardian necessary, how appointed.
- 555. Summons, how issued, directed, and what to contain.
- 556. Time for appearance of defendant.
- 557. Alias summons.
- 558. Same.
- 559. Summons, limitation upon time of service.
- 560. Summons, by whom and how served and returned.
- 561. Hour for appearance.
- 562. Form of pleadings.
- 563. Pleadings.
- 564. Complaint defined.
- 565. When demurrer to complaint may be put in.
- 566. Answer.
- 567. If the defendant omits to set up counter-claim.
- 568. When plaintiff may demur to answer.
- 569. Proceedings on demurrer.
- 570. Amendment of pleadings.
- 571. Answer or demurrer to amended pleadings.

**SECTION 543.** Actions in Justices' Courts must be commenced, and, subject to the right to change the place of trial (as in this Chapter provided), must be tried: Action, where may be commenced.

1. If there is no Justices' Court for the precinct or city in which the defendant resides: in any city or precinct of the county in which he resides;

2. When two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties: in the precinct or city in which any of the persons liable may reside;

Same.

3. In cases of injury to the person or property: in the precinct or city where the injury was committed, or where the defendant resides;

4. If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendant resides;

5. When the defendant is a non-resident of the county: in any precinct or city wherein he may be found;

6. When the defendant is a non-resident of the Territory in any precinct or city in the Territory;

7. When a person has contracted to perform an obligation at a particular place, and resides in another county, precinct, or city: in the precinct or city in which such obligation is to be performed, or in which he resides;

8. When the parties voluntarily appear and plead without summons: in any precinct or city in the Territory;

9. In all other cases: in the precinct or city in which the defendant resides.

Place of trial  
may be  
changed in cer-  
tain cases.

SEC. 544. The Court may, at any time before the trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the Probate Judge or Justice before whom the action is pending, by affidavit of either party, that such Judge or Justice is a material witness for either party;

2. When either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before such Judge or Justice, by reason of the interest, prejudice, or bias of the Judge or Justice;

3. When, from any cause, the Judge or Justice is disqualified from acting.

Limitation on  
the right to  
change.

SEC. 545. The place of trial cannot be changed in Justice's Court, on motion of the same party, more than once, upon any or all the grounds specified in the first and second subdivisions of the preceding section.

To what court  
transferred.

SEC. 546. When the Probate Court orders the place of trial to be changed, the action must be transferred for trial to the District Court of the county; when a Justice's Court orders the place of trial to be changed, the action must be transferred for trial to a Court the parties may agree upon; and if they do not agree, then to the Probate Court or to another Justice's Court in the same county.

SEC. 547. After an order has been made transferring the action for trial to another Court, the following proceedings must be had: Proceedings after order changing place of trial.

1. When so transferred from the Probate Court, the Clerk must immediately transmit to the Clerk of the District Court, on payment of his costs by the party applying, all the papers in the action, together with a certified transcript from the docket of the Probate Court of the proceedings therein.

2. When so transferred from a Justice's Court, the Justice ordering the transfer must immediately transmit to the Clerk of the Probate Court, or to the Justice to whom it is transferred, on payment of his costs by the party applying, all the papers in the action, together with a certified transcript from his docket of the proceedings therein; and when so transferred to a Justice's Court, the Justice of that Court must issue a notice stating when and where the trial will take place, which must be served upon the parties at least one day before the time fixed for trial.

SEC. 548. From the time the order changing the place of trial is made, the Court to which the action is thereby transferred has the same jurisdiction over it as though it had been commenced in such Court. Effect of an order changing place of trial.

SEC. 549. The parties to an action in a Probate or Justice's Court cannot give evidence upon any question which involves the title or possession of real property, nor can any issue presenting such question be tried by such Court; and if it appear from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the question of title or possession to real property, the Probate Court or Justice must suspend all further proceedings in the action and certify the pleadings, and, if any of the pleadings are oral, a transcript of the same, from his docket to the Clerk of the District Court of the county; and from the time of filing such pleadings or transcript with the Clerk, the District Court has over the action the same jurisdiction as if it had been commenced therein. Transfer of cases to the District Court.

SEC. 550. An action in a Probate or Justice's Court is commenced by filing a complaint. Actions, how commenced.

SEC. 551. The Court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued. Summons may issue within a year.

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Defendant may  
waive sum-  
mons.

SEC. 552. At any time after the complaint is filed the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Parties may ap-  
pear in person  
or by attorney.

SEC. 553. Parties in a Probate or Justice's Court may appear and act in person or by attorney; and any person, except the officer by whom the summons or jury process was served, may act as attorney.

When guar-  
dian necessary,  
how ap-  
pointed.

SEC. 554. When a guardian is necessary, he must be appointed by the Judge or Justice, as follows:

1. If the infant is plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he is of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed to act as such, and to be responsible for costs if he fail in the action, must be first filed with the Judge or Justice;

2. If the infant is defendant, the guardian must be appointed at the time the summons is returned, or before the pleadings. It is the right of the infant to nominate his own guardian, if the infant is over fourteen years of age, and the proposed guardian is present and consent in writing to be appointed. Otherwise the Judge or Justice may appoint any suitable person who gives such consent.

Summons, how  
issued, direct-  
ed, and what to  
contain.

SEC. 555. The summons must be directed to the defendant, and, if served from the Probate Court, signed by its Clerk and under its seal; if issued from the Justice's Court signed by the Justice, and must contain:

1. The title of the Court, and, if from the Probate Court the name of the County, and, if from a Justice's Court, the name of the precinct or city, and county, in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him;

3. A direction that the defendant appear and answer at a time specified in the summons;

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers the plaintiff will take judgment for the sum claimed by him (stating it);

5. In other actions, a notice that unless defendant so appears and answers the plaintiff will apply to the Court for the relief demanded.

If the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

SEC. 556. The time specified in the summons for the appearance of the defendant must be as follows: Time for appearance of defendant.

1. If an order of arrest is indorsed upon the summons, forthwith;

2. In all other cases, not less than three nor more than ten days from its date.

SEC. 557. If the summons is returned without being served upon any or all of the defendants, the Clerk of the Probate Court or the Justice, as the case may be, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date. Alias summons.

SEC. 558. The Clerk or Justice may, within a year from the date of the filing of the complaint, issue as many alias summons as may be demanded by the plaintiff. Same.

SEC. 559. The summons cannot be served out of the county in which the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendants out of the county; and, except also, when an action is brought against a party who has contracted in writing to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides. When the defendant resides in the county, the summons cannot be served within two days of the time fixed for the appearance of the defendant: when he resides out of the county, and the summons is served out of the county, the summons cannot be served within twenty days of such time. Summons, limitations on service of.

SEC. 560. The summons in the cases mentioned in the preceding section may be served by a Sheriff or constable of any of the counties of this Territory; *provided*, that when a summons, issued by a Justice of the Peace, is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the District Clerk of such county, to the effect that the person issuing the same was an acting Justice of the Peace at the date of the summons; or the summons may be served by any male resident, over the age of twenty-one years, not a party to the suit, within the county where the action is brought, and must be served and returned, as provided in actions commenced in the Summons, by whom and how served.

District Court; or it may be served by publication, and the sections of this Code providing for the publication of summons issued out of the District Court are applicable to the Probate and Justices' Courts, the necessary changes and substitutions being made therein.

Hour for appearance.

SEC. 561. The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than that time unless both parties have appeared, and the Judge or Justice being present, is engaged in the trial of another cause.

Form of pleadings.

SEC. 562. Pleadings in Probate and Justices' Courts:

1. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended;
2. May, except the complaint, be oral or in writing;
3. Must not be verified, unless otherwise provided in this Code;
4. If in writing, must be filed with the Court or Justice;
5. If oral, an entry of their substance must be made in the docket.

Pleadings.

SEC. 563. The pleadings are:

1. The complaint by the plaintiff;
2. The demurrer to the complaint;
3. The answer by the defendant;
4. The demurrer to the answer.

Complaint defined.

SEC. 564. The complaint in these Courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

When demurrer to complaint may be put in.

SEC. 565. The defendant may, at any time before answering, demur to the complaint.

Answer.

SEC. 566. The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue; also a statement in a plain and direct manner, of any other facts constituting a defense or counter claim, upon which an action might be brought by the defendant against the plaintiff in that Court.

If the defendant omits to set up counter claim.

SEC. 567. If the defendant omit to set up a counter claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When plaintiff may demur to answer.

SEC. 568. When the answer contains new matter in avoidance, or constituting a defense or a counter claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

**SEC. 569.** The proceedings on demurrer are as follows: Proceedings on demurrer.

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the Court allows, amend his complaint;

2. If the demurrer to a complaint is overruled, the defendant may answer forthwith;

3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the Court may allow;

4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.

**SEC. 570.** Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The Court may also, in its discretion, when an adjournment will, by the amendment, be rendered necessary, require, as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the Court, not exceeding twenty dollars. The Court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect; but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor. Amendment of pleadings.

**SEC. 571.** When a pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days, as the Court may allow. Answer or demurrer to amended pleadings.

## CHAPTER XXXVII.

### PROVISIONAL REMEDIES IN PROBATE AND JUSTICES' COURTS.

**SECTION 572.** Order of arrest, and arrest of defendant.

573. Order executed in any part of Territory.

574. Affidavit and undertaking for order of arrest.

575. A defendant arrested must be taken before the Justice or Judge immediately.

576. The officer must give notice to the plaintiff of arrest.

577. The officer must detain the defendant.



578. Writ of attachment shall issue upon affidavit.

579. Undertaking on attachment must be required.

580. Writ of attachment, substance of. Officer may take an undertaking instead of levying.

581. Certain provisions apply to all attachments in Probate and Justices' Courts.

582. How claim and delivery enforced.

Order of arrest,  
and arrest of  
defendant.

SECTION 572. An order to arrest the defendant may be indorsed on a summons issued out of a Probate or Justices' Court, and the defendant may be arrested thereon by the Sheriff or Constable, at the time of serving the summons, and brought before the Court or Justice, and there detained until duly discharged, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract when the defendant is about to depart from the Territory, with intent to defraud his creditors;

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity;

3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought;

4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female can be arrested in any action.

Order executed  
in any part of  
the Territory.

SEC. 573. In cases under the first subdivision of the last Section, or when the defendant is about to depart from the Territory, the order of arrest may be executed, and the defendant arrested in any part of the Territory.

Affidavit and  
undertaking  
for order of  
arrest.

SEC. 574. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the Judge or Justice by the affidavit of himself, or some other person, the facts upon which the application is founded. The plaintiff must also execute and file a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

A defendant  
arrested must  
be taken before  
the Court  
immediately.

SEC. 575. The defendant immediately upon being arrested, must be taken to the office of the Judge or Justice who made the order.



SEC. 576. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

The officer must give notice to the plaintiff of arrest.

SEC. 577. The officer making the arrest must keep the defendant in custody until he is discharged by order of the Court.

The officer must detain the defendant.

SEC. 578. A writ to attach the property of the defendant must be issued by the Judge or Justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment out of the District Court.

Writ of attachment shall issue upon affidavit.

SEC. 579. Before issuing the writ, the Judge or Justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Undertaking on attachment must be required.

SEC. 580. The writ may be directed to the Sheriff or any Constable of the county, or the Sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

Writ of attachment, substance of.

Officer may take an undertaking instead of levying.

SEC. 581. The sections of this Code providing for attachments out of the District Court, except as in this Chapter expressly provided, are applicable to attachments issued out of the Probate and Justices' Courts, the necessary changes and substitutions being made therein.

Certain provisions of Code apply to.

SEC. 582. In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this Code providing the practice in proceedings for

How claim and delivery enforced

claim and delivery of personal property in the District Court are applicable to like proceedings in Probate and Justices' Courts, the necessary changes and substitutions being made therein.

## CHAPTER XXXVIII.

### DEFAULTS, POSTPONEMENTS, TRIALS, AND JUDGMENTS IN PROBATE AND JUSTICES' COURTS.

- SECTION 583.** Judgment when defendant fails to appear
584. Judgment against defendant on demurrer.
585. Time when trial must be commenced.
586. When Court may, of its own motion, postpone trial.
587. Postponement by consent.
588. Postponement upon application of a party.
589. No continuance for more than ten days to be granted, unless upon filing of undertaking.
590. Issue defined and the different kinds.
591. Issue of law, how raised.
592. Issue of fact, how raised.
593. Issue of law, how tried.
594. Issue of fact, how tried.
595. Jury, how waived.
596. Either party failing to appear, trial may proceed at request of other party.
597. Challenges to jurors.
598. Manner of pleading a written instrument.
599. If a copy of an instrument be filed, the signatures will be deemed admitted, unless denied under oath.
600. Judgment by confession.
601. Judgment of dismissal entered in certain cases without prejudice.
602. Judgment upon verdict.
603. Judgment after trial by the Court.
604. Judgment when the defendant is subject to arrest.
605. If the sum found due exceeds the jurisdiction, the excess may be remitted.
606. Offer to compromise before trial.
607. Costs must be included in the judgment.
608. Abstract of Judgment.
609. Abstract may be filed and docketed in District Clerk's office.
610. Effect of docketing.
611. Judgment not a lien unless abstract is recorded in the Recorder's office.

Judgment  
when defend-  
ant fails to ap-  
pear.

**SECTION 583.** When the defendant fails to appear and answer or demur, at the time specified in the summons, or within one hour thereafter, the Court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum (not exceeding the amount stated in the summons) as appears by such evidence to be just.

SEC. 584. In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur: Judgment against defendant on demurrer.

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the Court;

2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once;

3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the Court.

SEC. 585. Unless postponed as provided in this Chapter, or unless transferred to another Court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of. Time when trial must be commenced.

SEC. 586. The Court may, of its own motion, postpone the trial: When Court may, of its own motion, postpone trial.

1. For not exceeding one day, if, at the time fixed by law or by an order of the Court for the trial, the Court is engaged in the trial of another action:

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary;

3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

SEC. 587. The Court may, by consent of the parties, given in writing or in open Court, postpone the trial to a time agreed upon by the parties. Postponement by consent.

SEC. 588. The trial may be postponed upon the application of either party, for a period not exceeding four months: Postponement upon application of a party.

1. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so;

2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and

Same.

the defendant is subject to arrest on execution, in the same manner as if he had not been discharged;

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the Court, to the effect that he will render himself amenable to the process of the Court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the Court must order the defendant to be discharged from custody;

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the Court, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced;—but the Court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

No continuance for more than ten days to be granted, unless upon filing of undertaking.

SEC. 589. No adjournment must, unless consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the Court, with two sureties, to be approved by the Court, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

Issue defined, and the different kinds.

SEC. 590. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and
2. Of fact.

Issue of law, how raised.

SEC. 591. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

SEC. 592. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,

2. Upon new matter in the answer, except an issue of law is joined thereon.

SEC. 593. An issue of law must be tried by the Court. Issue of law, how tried.

SEC. 594. An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the Court. Issue of fact, how tried.

SEC. 595. A jury may be waived: Jury, how waived.

1. By consent of parties, entered in the docket;

2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact;

3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

SEC. 596. If either part fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party. Either party failing to appear.

SEC. 597. The challenges are either peremptory or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth as grounds of such challenge in the District Court. Challenges for cause must be tried by the Court. Challenges to jurors.

SEC. 598. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, the Court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence. Manner of pleading a written instrument.

SEC. 599. If the plaintiff annex to his complaint, or file with the Court at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath. If a copy of an instrument be filed, the signatures deemed admitted.

SEC. 600. Judgments upon confession may be entered up in any Probate or Justice's Court specified in the confession, in any amount of which the Court has jurisdiction. Judgment by confession.

SEC. 601. Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases: Judgment dismissed.

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter;

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the Court;

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

Judgment upon verdict.

SEC. 602. When a trial by jury has been had, judgment must be entered by the Court at once, in conformity with the verdict.

Judgment after trial by the Court.

SEC. 603. When the trial is by the Court, judgment must be entered at the close of the trial.

Judgment, how entered when defendant subject to arrest.

SEC. 604. The judgment must be entered substantially in the form required by this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

If the sum found due exceeds the jurisdiction the excess may be remitted.

SEC. 605. When the amount found due to either party exceeds the sum for which the Court is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to compromise before trial.

SEC. 606. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum in excess of the offer, he cannot recover costs; but costs must be adjudged against him, and if he recover, be deducted from his recovery. The offer and failure to accept cannot be given in evidence, nor affect the recovery otherwise than as to costs.

Costs must be included in the judgment.

SEC. 607. The Court must tax and include in the judgment the costs allowed by law to the prevailing party.

Abstract of judgment.

SEC. 608. The Court, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in the following form (filling blanks according to the facts):

Territory of Idaho, County of . . . . .,  
 . . . . ., plaintiff, vs. . . . ., defendant.

In Probate Court of . . . . . County, (or, In Justices  
 Court, before . . . . ., Justice of the Peace, of . . . . .  
 Precinct, or City,) . . . . ., 18.., (insert date of abstract).

Judgment entered for plaintiff (or defendant) for  
 . . . . . dollars, on the . . . . . day of . . . . ., 18...

I certify that the foregoing is a correct abstract of a  
 judgment rendered in said action in my Court, or (as the  
 case may be) in the Court of—, Justice of the Peace,  
 as appears by his docket, now in my possession, as his  
 successor in office, signed by the Clerk of the Probate  
 Court and attested by its seal, or signed by the Justice,  
 as the case may be.

SEC. 609. The abstract may be filed and docketed in  
 the office of the District Clerk of the county in which  
 the judgment was rendered, and must be docketed in the  
 judgment docket of the District Court. The time of the  
 receipt of the abstract by the Clerk must be noted by him  
 thereon, and entered in the docket.

Abstract must  
 be filed and  
 docketed in  
 Clerk's office.

SEC. 610. From the time of docketing in the District  
 Clerk's office, execution may be issued thereon by the  
 District Clerk to the Sheriff of any county in the Terri-  
 tory, in the same manner and with like effect as if issued  
 on judgments of the District Courts.

Effect of dock-  
 eting.

SEC. 611. A judgment rendered in a Probate or Jus-  
 tice's Court creates no lien upon any lands of the de-  
 fendant, unless such an abstract is filed and docketed in  
 the office of the Clerk of the District Court of the county  
 in which the lands are situated. When so filed and  
 docketed, such a judgment is a lien upon the lands of the  
 judgment debtor situated in that county, for the period  
 of two years from the date of the judgment.

Judgment not  
 a lien unless  
 abstract is  
 docketed.

## CHAPTER XXXIX.

### EXECUTIONS FROM PROBATE AND JUSTICES' COURTS.

SECTION 612. Execution may issue at any time within five years.

613. Execution, contents of.

614. Renewal of execution.

615. Duty of officer receiving execution.

616. Proceedings supplementary to execution.

SECTION 612. Execution for the enforcement of a  
 judgment may be issued by the Clerk of the Probate  
 Court under the seal of the Court, or by the Justice who

Execution may  
 issue at any  
 time within  
 five years.



entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution,  
contents of.

SEC. 613. The execution must be directed to the Sheriff or to a Constable of the county, and must be subscribed by the Clerk or Justice and bear date the day of its delivery to the officer. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the Court or Justice before whom, and of the county where, and the time when it was rendered; the amount of judgment, if it be for money; and, if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the Sheriff or Constable, as are required in executions issued from the District Court.

Renewal of  
execution.

SEC. 614. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the Clerk or Justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer  
receiving exe-  
cution.

SEC. 615. The Sheriff or Constable to whom the execution is directed must execute the same in the same manner as the Sheriff is required to proceed upon executions directed to him; and the Constable, when the execution is directed to him, is vested for that purpose with all the powers of the Sheriff.

Certain pro-  
visions made  
applicable.

SEC. 616. The provisions of this Code as to Proceedings Supplementary to Execution in the District Court, are applicable to Probate and Justices' Courts, the necessary changes and substitutions being made therein.

## CHAPTER XL.

### GENERAL PROVISIONS RELATING TO PROBATE AND JUSTICES' COURTS.

#### SECTION 617. Contempts.

618. Proceedings for contempts.

619. Same.

620. Punishments for contempts.

621. The conviction must be entered in the docket.

622. Docket, what to contain.

623. Entries therein primary evidence of the fact.

624. An index to the docket must be kept.



- 625. Dockets must be delivered by Judge or Justice to his successor.
- 626. Proceedings when office becomes vacant and before a successor is appointed.
- 627. May issue execution or other process upon the docket of his predecessor.
- 628. Successor of a Justice, who shall be deemed.
- 629. If two Justices might be deemed successors, the Probate Judge shall designate one.
- 630. Probate Judge or Justices may issue subpoenas and final process to any part of the county.
- 631. Blanks must be filled in all papers issued by a Probate Judge or Justice, except subpoenas.
- 632. Judge or Justice to receive all moneys collected and pay same to parties.
- 633. In case of disability of Justice, another Justice may attend on his behalf.
- 634. May require security for costs.
- 635. Who entitled to costs.
- 636. What provisions of Code applicable.
- 637. Deposit.

**SECTION 617.** A Probate Judge or Justice may punish as for contempt, persons guilty of the following acts, and no other: Contempts, may punish for.

1. Disorderly, contemptuous or insolent behavior towards the Judge or Justice while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Judge or Justice, or in the immediate vicinity of the Court held by him, tending to interrupt the due course of a trial or other judicial proceeding;

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him;

4. Disobedience to a subpoena duly served, or refusing to be sworn or to answer as a witness;

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the Court held by him.

**SEC. 618.** When a contempt is committed in the immediate view and presence of the Judge or Justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. Proceedings for contempts.

**SEC. 619.** When the contempt is not committed in the immediate view and presence of the Judge or Justice, a warrant of arrest may be issued by such Judge or Justice, on which the person so guilty may be arrested and brought before the Judge or Justice immediately,

when an opportunity to be heard in his defense or excuse must be given. The Judge or Justice may, thereupon, discharge him, or may convict him of the offense.

Punishments  
for contempts.

SEC. 620. The Judge or Justice may punish for contempts, by fine or imprisonment, or both; such fine not to exceed, in any case, one hundred dollars, and such imprisonment one day.

The conviction  
must be enter-  
ed in the  
docket.

SEC. 621. The conviction, specifying particularly the offense and the judgment thereon, must be entered in the docket.

Docket, what  
to contain.

SEC. 622. Every Probate Court and Justice must keep a book, denominated a "Docket," in which must be entered:

1. The title of every action or proceeding;
2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof;
3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact;
4. The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading;
5. Every adjournment, stating on whose application and to what time;
6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.
7. The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request;
8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge;
9. The judgment of the Court, specifying the costs included and the time when rendered;
10. The issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Court, when and by whom.
11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

Entries therein  
prima y evi-  
dence of the  
fact.

SEC. 623. The several particulars of the last section specified must be entered under the title of the action to which they relate, and (unless otherwise in this Code

provided) at the time when they occur. Such entries in a Probate or Justices' docket, or a transcript thereof, certified by the Clerk or Justice, or his successor in office, are primary evidence of the facts so stated.

SEC. 624. The Clerk of the Probate Court and every Justice of the Peace must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

An index to the docket must be kept.

SEC. 625. Every Probate Judge and every Justice of the Peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

Dockets must be delivered to successor.

SEC. 626. If the office of a Justice become vacant by his death or removal from the precinct or city, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such Justice must be deposited in the office of some other Justice in the precinct, to be by him delivered to the successor of such Justice. If there is no other Justice in the precinct, then the docket and papers of such Justice must be deposited in the office of the County Recorder of the county, to be by him delivered to the successor in office of the Justice.

Proceedings when office becomes vacant, and before a successor is appointed.

SEC. 627. Any Probate Judge having the docket of his predecessor, and any Justice with whom the docket of his predecessor, or of any other Justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any Justice into whose hands the docket of a Justice formerly acting as such within the same territory may come, is, for the purposes of this section, considered the successor of such former Justice.

May issue execution or other process upon the docket of his predecessor.

SEC. 628. The justice elected to fill a vacancy is the successor of the Justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same precinct or city, from that time is the successor.

Successor of a Justice, who shall be deemed.

SEC. 629. When two or more Justices are equally entitled, under the last section, to be deemed the successors in office of the Justice, the Probate Judge, must by

If two Justices might be deemed successors.

a certificate subscribed by him and filed in the office of the County Recorder, designate which Justice is the successor of a Justice going out of office, or whose office has become vacant.

Subpoenas and final process issued to any part of County.

SEC. 630. Subpoenas out of any Probate or Justice's Court, and final process on any judgment recovered therein, may be issued to any part of the county.

Blanks must be filled in all papers except subpoenas.

SEC. 631. The summons, execution, and every other paper made or issued by a Probate Court or Justice, except a subpoena, must be issued without a blank left to be filled by another, otherwise it is void.

Judge or Justice to receive all moneys collected, and pay same to parties.

SEC. 632. Probate Judges and Justices of the Peace must receive from the Sheriffs or Constables of their county, all moneys collected on any process or order issued from their Courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

In case of disability of Justice, another Justice may attend on his behalf.

SEC. 633. In case of the sickness or other disability, or necessary absence of a Justice, on a return of a summons or at the time appointed for a trial, another Justice of the same precinct or city may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the Justice before whom the summons was returnable. In that case, the proper entry of proceedings before the attending Justice subscribed by him, must be made in the docket of the Justice before whom the summons was returnable. If the case is adjourned, the Justice before whom the summons was returnable may resume jurisdiction.

Security for costs.

SEC. 634. Probate and Justices' Courts may in all cases require a deposit of money or an undertaking, as security for costs of Court, before issuing a summons.

Costs.

SEC. 635. The prevailing party in Probate and Justices' Courts is entitled to costs of the action and also of any proceedings taken by him in aid of an execution, issued upon any judgment recovered therein.

Provisions of Code applicable.

SEC. 636. The Probate Courts in the exercise of their civil jurisdiction, and Justices' Courts, being Courts of peculiar and limited jurisdiction, only those provisions of this Code which are, in their nature, applicable to the organization, powers, and course of proceedings in these Courts, or which have been made applicable by special provisions in this Code, are applicable to these Courts and the proceedings therein.

Deposit in lieu of undertaking.

SEC. 637. In all civil cases arising in Probate and Justices' Courts, where an undertaking is required by

this Code, a deposit with the Court of a sum of money equal to the amount of the required undertaking, may be received and held by the Court in place of said undertaking.

SEC. 638. The practice of Probate Courts in criminal and in Probate matters, and the practice of Justices' Courts in criminal matters, is regulated by other statutes of this Territory. Practice in Probate and Criminal matters.

## CHAPTER XLI.

### APPEALS IN GENERAL.

SECTION 639. Judgment and orders may be reviewed.

640. Orders made out of Court, without notice, may be reviewed by the Judge.

641. Party aggrieved may appeal. Names of parties.

642. Within what time appeal may be taken.

643. Appeal, how taken.

644. Undertaking or deposit on appeal.

645. Undertaking on appeal from a money judgment.

646. Appeal from a judgment for a delivery of documents.

647. Appeal from a judgment directing the execution of a conveyance, etc.

648. Undertaking on appeal concerning real property.

649. Stay of proceedings. The Security on appeal may be limited in the case of an execution, etc.

650. Undertaking may be in one instrument or several.

651. Justification of sureties on undertaking on appeal.

652. Undertakings in cases not specified.

653. What papers to be used on an appeal from the judgment.

654. What papers used on appeals from orders, except orders granting or refusing new trials.

655. What papers to be used on an appeal from an order granting or refusing a new trial.

656. Copies and undertakings, how certified.

657. When an appeal may be dismissed. When not.

658. Effect of dismissal.

659. What may be reviewed on an appeal from judgment.

660. Remedial powers of an appellate Court.

661. On judgment on appeal, remittitur must be certified to the Clerk of the Court below.

SECTION 639. A judgment or order, in a civil action, except when expressly made final, may be reviewed as prescribed in this Code, and not otherwise. Judgment and orders may be reviewed.

SEC. 640. An order made out of Court, without notice to the adverse party, may be vacated or modified, without notice, by the Judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made. Orders made out of Court, without notice, may be reviewed by the Judge.

SEC. 641. Any party aggrieved may appeal in the

Party aggrieved  
and may appeal.  
Names of parties.

Within what  
time appeal  
may be taken.

cases prescribed in this Code. The party appealing is known as the appellant, and the adverse party as the respondent.

SEC. 642. An appeal may be taken to the Supreme Court from a District Court:

1. From a final judgment in an action or special proceeding commenced in the Court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment;

2. From a judgment rendered on an appeal from an inferior Court, within ninety days after the entry of such judgment.

3. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered on the minutes of the Court or filed with the Clerk.

Appeal, how  
taken.

SEC. 643. An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order or service is immaterial, but the appeal is ineffectual for any purpose, unless within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the Clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking  
or deposit on  
appeal

SEC. 644. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal.

SEC. 645. If the appeal be from a judgment or order

directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from, be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking, that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits, they may state that they are severally worth, and judgment may be entered against the sureties by the Court, from which the appeal is taken, pursuant to the stipulations herein designated. • When the judgment or order appealed from, is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking, must be made payable in the same kind of money or currency.

Undertaking  
on appeal from  
a money  
judgment.

SEC. 646. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the Court or Judge thereof may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the Court, or the Judge thereof, may direct, to the effect that the appellant will obey the order of the appellate Court upon the appeal.

Appeal from a  
judgment for  
delivery of  
documents.

SEC. 647. If the judgment or order appealed from, direct the execution of a conveyance or other instrument,



Appeal from a judgment directing the execution of a conveyance, etc.

Undertaking on appeal concerning real property.

the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the appellate Court.

SEC. 648. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same cannot be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

Stay of proceedings.

The security on appeal may be limited when appellant is executor, etc.

SEC. 649. Whenever an appeal is perfected, as provided in the preceding sections of this chapter, it stays all further proceedings in the Court below, upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the Court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from. And the Court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attachment, unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him; that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the Court below be sustained; and unless, within twenty days after the entry of the order appealed from, such appeal be perfected.

Undertaking may be in one instrument or several.

SEC. 650. The undertakings prescribed by Sections 644, 645, 646 and 648, may be in one instrument or several, at the option of the appellant.

SEC. 651. The adverse party may except to the suf-



ficiency of the sureties to the undertakings mentioned in Sections 644, 645, 646 and 648, at any time within thirty days after the filing of such undertaking; and, unless they or other sureties, within twenty days after the appellant has been served with notice of such exception, justify before a Judge of the Court below, the Probate Judge, upon five days notice to the respondent, of the time and place of justification, execution of the judgment, order, or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this Chapter, a deposit in the Court below of the amount of the judgment appealed from, and three hundred dollars in addition, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Justification of  
 sureties on  
 undertaking  
 on appeal.

SEC. 652. In cases not provided for in sections 645, 646, 647 and 648, the perfecting of an appeal by giving the undertaking, or making the deposit mentioned in Section 644, stays proceedings in the Court below, upon the judgment or the order appealed from, except where it directs the sale of perishable property; in which case the Court below may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the appellate Court. And except also, where it adjudges the defendant guilty of usurping or intruding into, or unlawfully holding a public office, civil or military, within this Territory. And except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

Undertakings,  
 in cases not  
 specified.

SEC. 653. On an appeal from a final judgment, the appellant must furnish the Court with a copy of the notice of appeal, of the judgment roll, and of any bill of exceptions or statement in the case, upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is made upon the minutes of the Court, as provided in Section 415, or any bill of exceptions settled, as provided in Sections 405 or 406, or used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

What papers to  
 be used on an  
 appeal from the  
 judgment.

SEC. 654. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the judgment

What papers  
 used on appeal  
 from judgment  
 rendered on  
 appeal.

ment or order appealed from, and of papers used on the hearing in the Court below.

What papers used on appeal from order granting or refusing new trial.

SEC. 655. On an appeal from an order granting or refusing a new trial, the appellant must furnish the Court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section 415 of this Code.

Copies and undertakings, how certified.

SEC. 656. The copies provided for in the last three Sections must be certified to be correct by the Clerk or the attorneys, and must be accompanied with a certificate of the Clerk or attorneys, that an undertaking on appeal, in due form, has been properly filed, or a stipulation of the parties waiving an undertaking.

When an appeal may be dismissed. When not.

SEC. 657. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking thereon, if a good and sufficient undertaking, approved by a Justice of the Supreme Court, be filed in the Supreme Court before the hearing upon motion to dismiss the appeal.

Effect of dismissal.

SEC. 658. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

What may be reviewed on an appeal from judgment.

SEC. 659. Upon an appeal from a judgment, the Court may review the verdict or decision, or any intermediate order, if excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Remedial powers of Appellate Court.

SEC. 660. When the judgment or order is reversed or modified, the appellate Court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as the restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on the appeal from which the proceedings were not stayed; and for relief in such cases, the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate Court that the appeal was made for delay, it may add to the cost such damages as may be just.

On judgment on appeal remittitur, must be certified to

SEC. 661. When judgment is rendered upon the appeal, it must be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of ap-

peal from the judgment, the Clerk with whom the roll <sup>the Clerk of the Court below-</sup> is filed must attach the certificate to the judgment roll, and enter a minute of the judgment of the Supreme Court on the docket, against the original entry. In cases of appeal from an order, the Clerk must enter at length in the records of the Court the certificate received, and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, by the Supreme Court on appeal.

## CHAPTER XLII.

### APPEALS FROM PROBATE COURTS TO DISTRICT COURT.

**SECTION 662.** When may be taken.

**663.** Executors and administrators not required to give undertaking on appeal.

**664.** Acts of acting administrator, etc., not invalidated by reversal of order appointing him.

**SECTION 662.** An appeal may be taken to the District <sup>When may be taken.</sup> Court of the county from a judgment or order of the Probate Court:

1. Granting or revoking letters testamentary, or of administration or of guardianship;

2. Admitting, or refusing to admit, a will to probate;

3. Against or in favor of the validity of a will, or revoking the probate thereof;

4. Against or in favor of setting apart property, or making an allowance for a widow or child;

5. Against or in favor of directing the partition, sale, or conveyance of real property;

6. Settling an account of an executor or administrator, or guardian;

7. Refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share;

8. Overruling motion for a new trial;

9. Confirming report of appraiser setting apart the homestead.

**SEC. 663.** When an executor or administrator who <sup>Executors and administrators not required to give undertaking on appeal.</sup> has given an official undertaking appeals from a judgment or order of the Probate Court made in the proceedings had upon the estate of which he is administrator or executor, his official undertaking stands in the place of an

undertaking on appeal, and the sureties therein are liable as on such undertaking.

Acts of acting executor, etc., not invalid by reversal of order appointing him.

SEC. 664. When the order or decree appointing an executor, or administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the Court, all lawful acts in administration upon the estate, performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

## CHAPTER XLIII.

### APPEALS FROM PROBATE AND JUSTICES' COURTS TO DISTRICT COURTS.

#### SECTION 665. Appeal from judgment.

- 666. Party appealing on questions of law alone must prepare a statement. Settlement of statement.
- 667. If the appeal be upon questions of fact, or of law and fact, no statement need be made.
- 668. Upon the appeal, must transmit the case.
- 669. Undertaking on appeal. Justification of sureties.
- 670. On filing undertaking, execution must be stayed.
- 671. Miscellaneous provisions on trials.

Appeal from judgment.

SECTION 665. Any party dissatisfied with a judgment rendered in a civil action in a Probate or Justice's Court, may appeal therefrom to the District Court of the county, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the Justice or Judge, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

Party appearing on questions of law alone must prepare a statement.

SEC. 666. When a party appeals to the District Court on questions of law alone, he must, within ten days from the rendition of judgment, prepare a statement of the case, and file the same with the Justice or Judge. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the Justice or Judge, and if no amendments be filed, the original statement stands as adopted. The statement

Settlement of statement.

thus adopted, or as settled by the Justice or Judge, with a copy of the docket of the Justice or Judge, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the District Court.

SEC. 667. When a party appeals to the District Court on questions of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in the District Court.

Appeal upon questions of fact, or of law and fact.

SEC. 668. Upon receiving the notice of appeal, and on payment of the fees of the Court or Justice and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the Clerk or Justice must, within five days, transmit to the Clerk of the District Court: if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the Justice or Judge may be compelled by the District Court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice or Judge by the party or his attorney. In the District Court, either party may have the benefit of all legal objections made in Probate or Justices' Court. And when the appeal is on questions of fact, or both law and fact, the District Court has the same power to grant relief by amendment and otherwise, as in actions commenced in the District Court.

Upon the appeal must transmit the case.

SEC. 669. An appeal from a Justice's or Probate Court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in the action in the District Court. When

Undertaking on appeal.

Same.

the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the Court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the District Court, and will obey any order made by the Court therein. When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed, any waste thereon, and that if the appeal be dismissed or withdrawn, or the judgment affirmed, or judgment be recovered against him in the action in the District Court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in said action in the District Court, not exceeding the sum to be fixed by the Judge or Justice of the Court from which the appeal is taken, and which sum must be specified in the undertaking. A deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the Justice or Judge, is equivalent to the filing of the undertaking; and in such cases the Justice or Judge must transmit the money to the Clerk of the District Court, to be by him paid out on the order of the Court. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the Justice or Judge before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

Justification of sureties.

On filing undertaking, execution must be stayed.

SEC. 670. If an execution be issued, on the filing of the undertaking staying proceedings, the Justice or Judge must, by order, direct the officer to stay all proceedings on the same. Such officers must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys

collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

SEC. 671. Upon an appeal heard upon a statement of the case, the District Court may review all orders affecting the judgment appealed from, and may set aside or confirm, or modify, any or all of the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, on appeal, the trial must be conducted in all respects as trials in the District Court. The provisions of this Code as to changing the place of trial, and all the provisions as to trials in the District Court, are applicable to trials on appeal in the District Court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the District Court, after notice, may order the appeal to be dismissed, with costs; and if it appear to such Court that this appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding twenty-five per cent. of the judgment appealed from. Judgments rendered in the District Court on appeal have the same force and effect, and may be enforced in the same manner, as judgments in actions commenced in the District Court.

Miscellaneous  
provisions on  
trials.

## CHAPTER XLIV.

### OF MISCELLANEOUS PROVISIONS.

*Proceedings against joint debtors.*

*Offer of the defendant to compromise.*

*Inspection of writings.*

*Motions and orders.*

*Notices, and filing and service of papers.*

*Of costs.*

*General provisions.*

SECTION 672. Parties not summoned in action on joint contract may be summoned after judgment.

673. Summons in that case, what to contain and how served.

674. Affidavit to accompany summons.

675. Answer, when filed and what it may contain.

676. What constitute the pleadings in the case.

677. Issues, how tried. Verdict, what to be.

678. Proceedings on offer of the defendant to compromise.

679. A party may demand inspection and copy of a writing.

680. Order and motion defined.



681. Motion and orders, where made.
682. Notice of motion, at what time to be given.
683. Transfer of motions and orders to show cause.
684. Order for payment of money, how enforced.
685. Notices and papers, when and how served.
686. Service by mail, when.
687. Service by mail, how.
688. Appearance. Notices after appearance.
689. Service on non-residents. Where a party has an attorney, service shall be on such attorney.
690. Preceding provisions not to apply to proceeding to bring party into contempt.
691. Service by telegraph.
692. Compensation of attorneys. Cost to parties.
693. When allowed of course to plaintiff.
694. Several actions brought on a single cause of action can carry costs in but one.
695. Defendant's costs must be allowed of course, in certain cases.
696. Costs, when in the discretion of the Court.
697. When the several defendants are not united in interest, costs may be severed.
698. Costs of appeal discretionary with the Court, in certain cases.
699. Referee's fees.
700. Continuance, costs may be imposed as condition of.
701. Costs when a tender is made before suit brought.
702. Costs in action by or against an administrator, etc.
703. Filing of an affidavit to bill of costs.
704. Costs on appeal, how claimed and recovered.
705. Interest and costs must be included by the Clerk in the judgment.
706. When plaintiff is a non-resident or foreign corporation, defendant may require security for costs.
707. If such security be not given, the action may be dismissed.
708. Costs when Territory is a party.
709. Costs when county is a party.
710. Lost papers, how supplied.
711. Papers without the title of the action, or with defective title may be valid.
712. Successive actions on the same contract, etc.
713. Consolidation of several actions into one.
714. Actions, when deemed pending.
715. Actions to determine adverse claims and by sureties.
716. Testimony, when to be taken by the Clerk.
717. The Clerk must keep a register of actions.
718. Two of three referees, etc., may do any act.
719. The time within which an act is to be done may be extended.
720. Actions against a Sheriff for official acts.
721. Undertakings mentioned in this Code, requisites of.
722. People not required to give bonds when Territory is a party.
723. Sureties, when substituted.

Parties not  
summoned in  
action on joint  
contract may  
be summoned  
after judgment,

**SECTION 672.** When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 223, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

SEC. 673. The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time, as the original summons. It it is not necessary to file a new complaint.

Summons in that case, what to contain and how served.

SEC. 674. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Affidavit to accompany summons.

SEC. 675. Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, except a discharge from such liability by the Statute of Limitations; or he may deny his liability on the obligation upon which the judgment was recovered.

Answer, when filed and what it may contain.

SEC. 676. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavits annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations.

What constitute the pleadings in the case.

SEC. 677. The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

Issues, how tried.

Verdict, what to be.

SEC. 678. The defendant in any action may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the Clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

Proceedings on offer of defendant to compromise after suit brought.

SEC. 679. Any Court in which an action is pending, or a Judge thereof, or a Probate Judge, may, upon no-

A party may demand inspection and copy of a book, paper, etc.

tice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of entries of account in any book, or of any document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the Court may exclude the book, document, or paper from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the Court may also punish the party refusing, for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

Order and motion defined.

SEC. 680. Every direction of a Court or Judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Motions and orders, where made.

SEC. 681. Motions must be made in the county in which the action is pending, or in any county in the same judicial district. Orders made out of Court may be made by the Judge of the Court in any part of the Territory.

Notice of motion, at what time to be given.

SEC. 682. When a written notice of a motion is required by this Code, or by a rule of the Supreme or District Court, it must be given, unless a different time is prescribed, if the hearing is had in the same district in which the action is pending or the proceeding had, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but the Court or Judge may prescribe a shorter time.

Transfer of motions and orders to show cause.

SEC. 683. When a notice of motion is given, or an order to show cause is made returnable before a Judge out of Court, and at the time fixed for the motion, or on the return day of the order, the Judge is unable to hear the parties, the matter may be continued or transferred by his order to some other Judge.

Order for payment of money how enforced. When and how served.

SEC. 684. Whenever an order for the payment of a sum of money is made by a Court or Judge pursuant to the provisions of this Code, it may be enforced by execution in the same manner as if it were a judgment.

SEC. 685. The service may be personal, by delivery

to the party or attorney on whom the service is required When and how served.  
to be made, or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the Post Office, directed to such attorney;

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the Post Office, directed to such party.

SEC. 686. Service by mail may be made, where the Service by mail, when.  
person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail.

SEC. 687. In case of service by mail the notice or Service by mail, how.  
other paper must be deposited in the post office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended one day for every twenty-five miles distance between the place of deposit and the place of address; such extension, however, not to exceed thirty days in all.

SEC. 688. A defendant appears in an action when he Appearance.  
answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail. Notices after appearance.

Service on non-residents.

Where a party has an attorney, service shall be on such attorney.

Preceding provisions not to apply to proceeding to bring party into contempt.

Service by telegraph.

SEC. 689. When a plaintiff or a defendant, who has appeared, resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt. If there be no Attorney of record service may be made upon the party.

SEC. 690. The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

SEC. 691. Any summons, writ, or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order, or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect in all respects, as the original thereof might be if delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ or order, must also be filed in the Court from which it was issued, and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal."

Compensation of attorneys.

Costs to parties.

When allowed of course to plaintiff.

SEC. 692. The measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

SEC. 693. Costs are allowed of course to the plaintiff, upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property;
2. In an action to recover the possession of personal property, where the value of the property amounts to

one hundred dollars or over; such value shall be determined by the jury, Court, or referee by whom the action is tried; Same.

3. In an action for the recovery of money or damages, when plaintiff recovers one hundred dollars or over:

4. In a special proceeding;

5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

SEC. 694. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action, openly within this Territory, but the disbursements of the plaintiff must be allowed to him in each action. Several actions brought on a single cause of action can carry costs in but one.

SEC. 695. Costs must be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in Section 693, and in special proceedings. Defendant's costs must be allowed of course, in certain cases.

SEC. 696. In other actions than those mentioned in Section 693, costs may be allowed or not, and, if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the Court; but no costs can be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars. Costs, when in the discretion of the Court.

SEC. 697. When there are several defendants in the actions mentioned in Section 693, not united, in interest and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the Court must award costs to such of the defendants as have judgment in their favor. When the several defendant are not united in interest costs may be severed.

SEC. 698. In the following cases the costs of appeal are in the discretion of the Court; Costs of appeal discretionary with the Court in certain cases.

1. When a new trial is ordered;

2. When a judgment is modified.

SEC. 699. The fees of referees are five dollars to each for every day spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rate shall be allowed. Referee's fees.



Continuance,  
costs may be  
imposed as  
condition of.

SEC. 700. When an application is made to a Court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the Court or referee, as a condition of granting the same.

Costs when a  
tender is made  
before suit  
brought.

SEC. 701. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in Court, for plaintiff, the amount so tendered, and the allegation, be found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs in action  
by or against  
an administra-  
tor., etc.

SEC. 702. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the Court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Filing and ser-  
vice, and affi-  
davit of bill of  
costs.

SEC. 703. The party in whose favor the judgment is rendered, and who claims his costs, must deliver to the Clerk within three days after the verdict or notice of the decision of the Court or referee—a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within two days after notice of filing of the bill of costs, file a motion to have the same taxed by the Court in which the judgment was rendered, or by the Judge thereof at Chambers.

Costs on ap-  
peal, how  
claimed and  
recovered.

SEC. 704. Whenever costs are awarded to a party by an appellate Court, if he claims such costs, he must within thirty days after the remittitur is filed with the Clerk below, deliver to such Clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Interest and  
costs must be  
included by  
the Clerk in  
the judgment.

SEC. 705. The Clerk must include in the judgment entered up by him, any interest on the verdict or decision of the Court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained;



and he must, within two days after the same are <sup>same.</sup> taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

SEC. 706. When the plaintiff in an action resides out <sup>Security for</sup> of the Territory, or is a foreign corporation, security for <sup>costs.</sup> the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the Court or Judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

SEC. 707. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and <sup>If such security is not given, the action may be dismissed.</sup> that no undertaking as required has been filed, the Court or Judge may order the action to be dismissed.

SEC. 708. When the Territory is a party, and costs <sup>Costs when Territory is a party.</sup> are awarded against it, they must be paid out of the Territorial Treasury, and the Territorial Controller shall draw his warrant therefor on the general fund.

SEC. 709. When a county is a party, and costs are <sup>Costs when county is a party.</sup> awarded against it, they must be paid out of the County Treasury.

SEC. 710. If an original pleading or paper be lost, <sup>Lost papers, how supplied.</sup> the Court may authorize a copy thereof to be filed and used instead of the original.

SEC. 711. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer <sup>Papers without the title of the action, or with defective title, may be valid.</sup> to such action or proceeding.

SEC. 712. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom. <sup>Successive actions on the same contract, etc.</sup>

SEC. 713. Whenever two or more actions are pending at one time between the same parties and in the same Court, upon causes of action which might have been joined, the Court may order the actions to be consolidated. <sup>Consolidation of several actions into one.</sup>

Actions, when deemed pending.

SEC. 714. An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Actions to determine adverse claims, and by sureties.

SEC. 715. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which plaintiff is bound as a surety.

Testimony, when to be taken by the Clerk.

SEC. 716. On the trial of an action in a Court of record, if there is no short-hand reporter of the Court in attendance, the Court may require the Clerk to take down the testimony in writing.

The Clerk must keep a register of actions.

SEC. 717. The Clerk must keep among the records of the Court a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Two of three referees, etc., may do any act.

SEC. 718. When there are three referees, or three arbitrators, all must meet, but two of them may do any act which might be done by all.

Time within which an act under this code to be done, may be extended.

SEC. 719. When an act to be done, as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or of bills of exceptions, or of amendments thereto, or to the service of notices, other than of appeal, the time allowed by this Code may be extended, upon good cause shown, by the Court in which the action is pending, or the Judge thereof.

Actions against a Sheriff for official acts.

SEC. 720. If an action is brought against a Sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the Court, or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Undertakings mentioned in this Code, requisites of.

SEC. 721. In all cases where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the Territory, and are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclu-

sive of property exempt from execution; but when the <sup>same.</sup> amount specified in the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 722. In any civil action or proceeding wherein the Territory or the people of the Territory is a party <sup>People not required to give bonds.</sup> plaintiff, or any Territorial officer, in his official capacity, or on behalf of the Territory, or any county, or city, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, or city; but on complying with the other provisions of this Code, the Territory, or the people thereof, or any Territorial officer acting in his official capacity, or any county or city, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this Code.

SEC. 723. Whenever any surety on an undertaking <sup>Surety on appeal bond when substituted to rights of judgment creditor.</sup> on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate Court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy such judgments in all respects as if he had recovered the same.

## CHAPTER XLV.

### SPECIAL PROCEEDINGS OF A CIVIL NATURE.

#### SECTION 724. Parties, how designated.

725. Judgment and order same meaning as in civil actions.

726. Writ of review defined.

727. When and by what Courts granted.

728. Application for, how made.

729. The writ to be directed to the inferior tribunal, etc.

730. Contents of the writ.

731. Proceedings in inferior Court may be stayed, or not.

732. Service of the writ.

733. The review under the writ, extent of.

734. A defective return of the writ may be perfected. Hearing and judgment.

735. Copy of judgment must be sent to the inferior tribunal.

736. Judgment rolls.

737. Mandate defined.

738. When and by what Court issued.

739. Writ, when and upon what to issue.

- 740 Must be either alternative or peremptory. Substance.
- 741. If the application be without notice, the alternative writ may issue; otherwise, the peremptory. Notice and default.
- 742. The adverse party may answer under oath.
- 743. If an essential question of fact is raised, the Court may order a jury trial.
- 744. The applicant may demur to the answer, or countervail it by proof.
- 745. Motion for new trial, where made.
- 746. The Clerk must transmit the verdict to the Court where the motion is pending, after which the hearing shall be had on motion.
- 747. If no answer be made, or if the answer raise no material issue of fact, the hearing must be before the Court.
- 748. If the applicant succeed, he may have damages, costs, and a peremptory mandate.
- 749. Service of the writ.
- 750. Penalty for disobedience to the writ.
- 751. Prohibition defined.
- 752. Where and when issued.
- 753. Writ may be alternative or peremptory. Form of.
- 754. Certain provisions of the preceding Chapter applicable.
- 755. Writs of review, mandate and prohibition may issue and be heard at chambers.

Parties, how designated.

SECTION 724. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Judgment and order same meaning as in civil actions.

SEC. 725. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

Certiorari defined.

SEC. 726. The writ of certiorari may be denominated the writ of review.

When and by what Courts granted.

SEC. 727. A writ of review may be granted by any Court, except a Probate or Justice's Court, when an inferior tribunal, Board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, Board or officer, and there is no appeal, nor, in the judgment of the Court, any plain, speedy, and adequate remedy.

Application for, how made.

SEC. 728. The application must be made on affidavit by the party beneficially interested, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

The writ to be directed to the inferior tribunal, etc.

SEC. 729. The writ may be directed to the inferior tribunal, Board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk if there be one, must return the writ with the transcript required.

SEC. 730. The writ of review must command the party to whom it is directed to certify fully to the Court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the Court; and requiring the party, in the meantime to desist from further proceedings in the matter to be reviewed. Contents of the writ.

SEC. 731. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the Court, but if omitted, the power to the inferior Court or officer is not suspended or the proceedings stayed. Proceedings in inferior Court may be stayed, or not.

SEC. 732. The writ must be served in the same manner as a summons in civil action, except when otherwise expressly directed by the Court. Service of the writ.

SEC. 733. The review upon this writ cannot be extended further than to determine whether the inferior tribunal, Board, or officer has regularly pursued the authority of such tribunal, Board, or officer. The review under the writ, extent of.

SEC. 734. If the return of the writ be defective, the Court may order a further return to be made. When a full return has been made, the Court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below. A defective return of the writ may be perfected. Hearing and judgment.

SEC. 735. A copy of the judgment, signed by the Clerk, must be transmitted to the inferior tribunal, Board, or officer having the custody of the record or proceeding certified up. Copy of the judgment must be sent to the inferior tribunal.

SEC. 736. A copy of the judgment, signed by the Clerk, entered upon or attached to the writ and return, constitute the judgment roll. Judgment rolls.

SEC. 737. The writ of mandamus may be denominated a writ of mandate. Mandamus defined.

SEC. 738. It may be issued by any Court, except a Justice's or Probate Court, to any inferior tribunal, corporation, Board, or person, to compel the performance of an act which the law especially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, Board, or person. When and by what Court issued.

SEC. 739. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the Writ, when and upon what to issue.

Writ must be either alternative or peremptory.

If the application be without notice, the alternative writ may issue; otherwise, the peremptory.

Notice and default.

The adverse party may answer under oath.

If an essential question of fact is raised, the Court may order a jury trial.

The applicant may demur to the answer, or countervail it by proof.

Motion for new trial, where made.

ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

SEC. 740. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted, and a return day inserted.

SEC. 741. When the application to the Court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the Court, whether the adverse party appear or not.

SEC. 742. On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 743. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the Court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

SEC. 744. On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

SEC. 745. The motion for new trial must be made in the Court in which the issue of fact is tried.



SEC. 746. If no notice of a motion for a new trial be given, or if given, the motion be denied, the Clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the Court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

The Clerk must transmit the verdict to the Court where the motion is pending, after which the hearing shall be had on motion.

SEC. 747. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the Court must proceed to hear or fix a day for hearing the argument of the case.

If no answer be made, or if it raise immaterial issues, proceedings.

SEC. 748. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the Court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

If the applicant succeed, he may have damages, costs, and a peremptory mandate.

SEC. 749. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court. Service upon a majority of the members of any Board or body, is service upon the Board or body, whether at the time, of the service the Board or body was in session or not.

Service of the writ.

SEC. 750. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board or person, if it appear to the Court that any member of such tribunal, corporation or Board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

Penalty for disobedience of writ.

SEC. 751. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, Board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, Board, or person.

Prohibition defined.

SEC. 752. It may be issued by any Court except Probate or Justices' Courts, to an inferior tribunal, or to a corporation, Board, or person, in all cases where there is

Where and when issued.



not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Writ may be alternative or peremptory.

SEC. 753. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the Court from which it is issued, and to show cause before such Court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

SEC. 754. The provisions of the preceding sections from 741 to 750, both inclusive, apply to the proceedings for writ of prohibition.

Writs of review, mandate and prohibition may issue and be heard at chambers.

SEC. 755. Writs of review, mandate, and prohibition may be issued by any of the Justices of the Supreme Court, or by any District Judge, in vacation, and may, in the discretion of the Justice or Judge issuing the writ, be made returnable and a hearing thereon be had in vacation.

Certain provisions applicable.

SEC. 756. Except as otherwise provided in this Chapter, the provisions of this Code relative to Civil Actions in the District Court, are applicable to and constitute the rules of practice in the proceedings mentioned in this Chapter.

Same.

SEC. 757. The provisions of this Code relative to new trials in and appeals from the District Court, except in and so far as they are inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

## CHAPTER XLVI.

### OF CONTESTING CERTAIN ELECTIONS.

SECTION 758. Who may contest, and grounds of contest.

759. Irregularity and improper conduct of Judges.

760. When not to.

761. Illegal votes, when not to vitiate election.

762. Proceedings on contest.

763. Statement of cause of contest.

764. Statement of cause of contest.

- 765. Probate Judge to hold special term for trial of contest.
- 766. Clerk to issue citation to respondent.
- 767. Witnesses, attendance or, how enforced.
- 768. Power of Court. Adjournment of Court.
- 769. Rules to govern Court in trial of contest.
- 770. Court may declare who was elected.
- 771. Fees of officers and witnesses.
- 772. Costs.
- 773. Appeal.
- 774. When election void and office vacant.
- 775. District offices.

**SECTION 758.** Any elector of a county, precinct, or city, may contest the right of any person declared elected to an office to be exercised therein, for any of the following grounds:

1. For malconduct on the part of the Board of Judges, or any member thereof;

2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office; Who may contest, and grounds of contest.

3. When the person whose right is contested has given to any elector or Inspector, Judge, or Clerk of the election, any bribe or reward, or has offered any such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined by law.

4. On account of illegal votes.

**SEC. 759.** No irregularity or improper conduct in the proceedings of the Judges, or any of them, is such malconduct as avoids an election, unless the irregularity or improper conduct is such as to procure the person whose right to the office is contested to be declared elected when he had not received the highest number of legal votes. Irregularity and improper conduct of Judges, when to annul elections.

**SEC. 760.** When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the Board of Judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct, or precincts, would change the result as to such office in the remaining vote of the county. When not to.

**SEC. 761.** Nothing in the fourth ground of contest is to be so construed as to authorize an election to be set aside on account of illegal votes, unless it appear that a number of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person. Illegal votes, when not to vitiate election.

for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Proceedings on  
contest.

SEC. 762. When an elector contests the right of any person declared elected to such office, he must, within forty days after the return day of the election, file with the Probate Court a written statement, setting forth specifically:

1. The name of the party contesting such election, and that he is an elector of the district, county, or precinct, as the case may be, in which such election was held:

2. The name of the person whose right to the office is contested:

3. The office;

4. The particular grounds of such contest;

—Which statement must be verified by the affidavit of the contesting party that the matters and things therein contained are true.

Statement of  
cause of con-  
test.

SEC. 763. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally, that in one or more specified precincts illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

When based on  
reception of il-  
legal votes,  
contestant to  
deliver to re-  
spondent a list  
of votes  
claimed to be  
illegal.

Statement of  
cause of con-  
test.

Want of form  
not to v. late.

SEC. 764. No statement of the grounds of contest will be rejected, nor the proceedings dismissed by any Court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which such election is contested.

SEC. 765. Upon the statement being filed, the Probate Judge must give notice and fix some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election.

Clerk to issue  
citation to re-  
spondent.

SEC. 766. The Clerk must also, at the same time, issue a citation for the person whose right to the office is contested, to appear at the time and place specified in the notice, which citation must be delivered to the Sheriff and be served upon the party in person, or, if he cannot

be found, by leaving a copy thereof at the house where he last resided, not less than eight days before the hearing.

SEC. 767. The Clerk must issue subpoenas for witnesses at the request of either party, which must be served as other subpoenas; and the Probate Court has full power to issue attachments to compel the attendance of witnesses who have been subpoenaed to attend. Witnesses, attendance of, how enforced.

SEC. 768. The Court must meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn from day to day until such trial is ended, and may also continue the trial, before its commencement, for any time not exceeding twenty days, for good cause shown by either party upon affidavit, at the costs of the party applying for such continuance. Power of Court. Adjournment of Court.

SEC. 769. The Court must be governed, in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of the contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the Court must pronounce judgment in the premises, either confirming or annulling and setting aside such election. Rules to govern Court in trial of contest.

SEC. 770. If in any such case it appears that another person than the one returned has the highest number of legal votes, the Court must declare such person elected. Court may declare who was elected.

SEC. 771. The Clerk, Sheriff, and witnesses shall receive, respectively, the same fees, from the party against whom judgment is given, as are allowed for similar services in the Probate Court. Fees of officers and witnesses.

SEC. 772. If the proceedings are dismissed for insufficiency, or want of prosecution, or the election is by the Court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested, in favor of the party contesting the same. Primarily, each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner as similar costs are collected in other cases. Costs.

SEC. 773. Either party, aggrieved by the judgment of the Court, may appeal therefrom as in other cases. Appeal.

When election  
void and office  
vacant.

SEC. 774. Whenever an election is annulled or set aside by the judgment of the Probate Court, and ten days have elapsed and no appeal has been taken, the commission, if any has issued, is void.

District officer.

SEC. 775. Any elector of a District may in like manner contest the right of any person declared elected to a District office, for like causes. Such contest shall be made and heard before any District Court or Judge of the District in any county of the District.

## CHAPTER XLVII.

### SUMMARY PROCEEDINGS.

- SECTION 776.** Judgment may be confessed.
- 777. Statement in writing and form thereof.
  - 778. Filing statement and entering judgment.
  - 779. How, in Probate and Justices' Courts.
  - 780. Controversy, how submitted without action.
  - 781. Judgment on, as in other cases.
  - 782. Judgment may be enforced or appealed from.
  - 783. Persons confined may be discharged.
  - 784. Notice of application.
  - 785. Service of notice.
  - 786. Examination before Judge.
  - 787. Interrogatories may be in writing.
  - 788. Oath to be administered.
  - 789. Order of discharge.
  - 790. If not discharged, prisoner may again apply, when.
  - 791. Discharge final.
  - 792. Judgment remains in force.
  - 793. Plaintiff may order discharge of prisoner.
  - 794. Plaintiff to advance funds for support of prisoner.
  - 795. Forcible entry defined.
  - 796. Forcible detainer defined.
  - 797. Unlawful detainer defined.
  - 798. Service of notice.
  - 799. Courts have jurisdiction.
  - 800 & 801. Same.
  - 802. Parties defendant.
  - 803. Parties generally.
  - 804. Complaint, and Summons.
  - 805. Arrest.
  - 806. Judgment by default.
  - 807. Defendant may appear, etc.
  - 808. Trial by jury.
  - 809. Showing required.
  - 810. Complaint must be amended in certain cases.
  - 811. Verdict and judgment.
  - 812. Verification of complaint and answer.
  - 813. Effect of appeal upon the judgment.
  - 814. Rules of practice. Appeals, how taken, etc.

**SECTION 776.** A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this Chapter. Such judgment may be entered in any Court having jurisdiction for like amounts.

Judgment may be confessed for debt due or contingent liability.

**SEC. 777.** A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

Statement in writing and form thereof.

1. It must authorize the entry of judgment for a specified sum;

2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due;

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

**SEC. 778.** The statement must be filed with the Clerk of the Court in which the judgment is to be entered, who must indorse upon it, and enter in the judgment book, a judgment of such Court for the amount confessed, with ten dollars costs. The statement and affidavit, with the judgment indorsed, thereupon becomes the judgment roll.

Filing statement and entering judgment.

**SEC. 779.** In a Probate or Justice's Court, where the Court has the authority to enter the judgment, the statement may be filed with the Court or Justice, who must thereupon enter in his docket a judgment of his Court for the amount confessed, with three dollars costs. If a transcript of such judgment be filed with the District Clerk, a copy of the statement must be filed with it.

How, in Probate and Justices' Courts.

**SEC. 780.** Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The Court must thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

Controversy, how submitted without action.

**SEC. 781.** Judgment must be entered in the judgment book as in other cases, but without costs for any

Judgment on, as in other cases, but without costs prior to notice of trial.

Judgment may be enforced or appealed from as in an action.

Persons confined may be discharged.

Notice of application.

Service of notice.

Examination before Judge.

Interrogatories may be in writing.

Oath to be administered.

Order of discharge.

proceeding prior to the trial. The case, the submission' and a copy of the judgment constitute the judgment roll'

SEC. 782. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

SEC. 783. Any person confined in jail, on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this Chapter specified.

SEC. 784. Such person must cause a notice, in writing, to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the Judge of the District Court of the county in which such person may be confined; or, in case of his absence or inability to act, to the Judge of the Probate Court of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

SEC. 785. Such notice must be served upon the plaintiff, his agent, or attorney, one day at least before the hearing of the application.

SEC. 786. At the time and place specified in the notice, such person must be taken before such Judge, who must examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such Judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

SEC. 787. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

SEC. 788. If, upon the examination, the Judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit: "I, ——— do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

SEC. 789. After administering the oath, the Judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order,



must discharge the prisoner forthwith, if he be imprisoned for no other cause.

SEC. 790. If such Judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty days, in the same manner as above provided, and the same proceedings must thereupon be had. If not discharged, prisoner may again apply, when.

SEC. 791. The prisoner, after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the Judge, or in taking the oath before prescribed. Discharge final.

SEC. 792. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed. Judgment remains in force.

SEC. 793. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action. Plaintiff may order discharge of prisoner, who shall not thereafter be liable, etc.

SEC. 794. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney must advance to the jailor on such commitment, sufficient money for the board of the prisoner at the rate provided by law, for one week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor. Plaintiff to advance funds for support of prisoner.

SEC. 795. Every person is guilty of a forcible entry who either; Forcible entry defined.

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

SEC. 796. Every person is guilty of a forcible detainer who either: Forcible detainer defined.

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peaceably or otherwise; or,

2. Who, in the night time, or during the absence of

Same.

the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Unlawful detainer defined.

SEC. 797. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. Where he continues in possession in person, or by sub-tenants, of the property, or of any part thereof, after the expiration of the term for which it is let to him, without permission of his landlord or his successors; but in a case of a tenancy at will, it must first be terminated by notice of five days;

2. Where he continues in possession in person, or by sub-tenants, without the permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days notice in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due;

3. Where he continues in possession in person, or by sub-tenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, than the one for payment of rent, and three days notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant.

Within three days after the service of the notice, the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; *provided*, if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his sub-tenant demanding the

performance of the violated covenant or conditions of same. the lease.

A tenant may take proceedings similar to those prescribed in this Chapter, to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this Chapter.

SEC. 798. The notices required by the preceding section may be served, either: Service of notice.

1. By delivering a copy to the tenant personally; or,

2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant, at his place of residence; or,

3. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

SEC. 799. The District Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this Chapter. Court have jurisdiction.

SEC. 800. The Probate Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this Chapter when the whole amount of rent and damages claimed does not exceed five hundred dollars. Jurisdiction of Probate Court under this Chapter.

SEC. 801. Justices' Courts have jurisdiction of proceedings under this Chapter where the whole amount of rent and damages claimed does not exceed one hundred dollars. Jurisdiction of Justices' Courts under this Chapter.

SEC. 802. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises, need be made parties defendant in the proceeding, nor shall any proceeding abate, Parties defendant.

- Same.** nor the plaintiff be nonsuited for the nonjoinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. In case a married woman be a tenant or a sub-tenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.
- Parties generally.** SEC. 803. Except as provided in the preceding section, the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.
- The complaint.** SEC. 804. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon returnable as in other cases.
- Summons to issue.**
- Arrest.** SEC. 805. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.
- Judgment by default.** SEC. 806. If, at the time appointed, the defendant do not appear and defend, the Court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.
- Defendant may appear, etc.** SEC. 807. On or before the day fixed for his appearance, the defendant may appear and answer or demur.
- Trial by jury.** SEC. 808. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the Court in which the action is pending.
- Showing required of plaintiff, forcible entry or detainer.** SEC. 809. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the

forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

SEC. 810. When upon the trial of any proceeding under this Chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed shows to the satisfaction of the Court good cause therefor.

Complaint  
must be  
amended in  
certain cases.

SEC. 811. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the Court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the Court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into Court,

Verdict and  
Judgment.

- Same. for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the Court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.
- Verification of complaint and answer, Sec. 812. The complaint and answer must be verified.
- Effect of an appeal upon the judgment. Sec. 813. An appeal taken by the defendant does not stay proceedings upon the judgment unless the Court so directs.
- Provisions applicable to proceedings under this Chapter. Sec. 814. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this Chapter, apply to the proceedings mentioned in this Chapter.

## CHAPTER XLVIII.

### ENFORCEMENT OF LIENS.

- 2 U.S. 509*
- SECTION 815. Liens of mechanics and others.
- 816. Sub-contractors and others.
  - 817. Liens for grading and filling lots.
  - 818. Interest in the land.
  - 819. Effect of liens.
  - 820. Claim of lien.
  - 821. Liens upon two or more pieces of property, each to be designated.
  - 822. Claim to be recorded.
  - 823. Time of continuance.
  - 824. Sub-contractors.
  - 825. Recovery by contractor.
  - 826. Court to declare rank of liens.
  - 827. Actions for separate liens.
  - 828. Lien does not impair right.
  - 829. Rules of practice. New trials and appeals.

- What laborers, contractors, etc., may have liens upon. SECTION 815. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the

amount which the owner would be otherwise liable to pay.

SEC. 816. Any sub-contractor, material man, laborer, or other person, performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last Section, may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person, may have a lien for such amount, but not exceeding the amount then or thereafter due such contractor from such owner, or person employing him, under the contract. And any person furnishing materials, or performing labor for a sub-contractor, may, by like notice to the contractor, be subrogated to the rights of such sub-contractor.

Notice by sub-Contractor e/c. and lien for amount due Contractor.

SEC. 817. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Liens for grading and filling lots and streets.

SEC. 818. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

What interest in the land subject to the lien.

SEC. 819. The liens provided for in this Chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished: also, to any lien, mortgage, or other incumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished.

Effect of liens.

SEC. 820. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after

Claim of lien to be filed in Recorder's office.



Same.	the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the County Recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or some other person.
Liens upon two or more pieces of property.	SEC. 821. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements; otherwise, the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.
Amount due from each to be designated.	
Claim to be recorded.	SEC. 822. The Recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.
Fees of Recorder	
Time of continuance of lien.	SEC. 823. No lien provided for in this Chapter binds any building, mining claim, improvement, or structure for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper Court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than two years from the time the work is completed, by any agreement to give credit.
Sub-contractors, who are, and when paid out of proceeds of sale.	SEC. 824. All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are sub-contractors, and the Court, in the judgment, must direct the amount due sub-contractors to be paid out of the proceeds of sales before any part of such proceeds are paid to the contractor.

SEC. 825. The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor the amount of such judgment and costs.

Measure of recovery by contractor, protection of owner's rights.

SEC. 826. In every case in which different liens are asserted against any property, the Court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz: First. All persons other than the original contractors and sub-contractors. Second. The sub-contractors. Third. The original contractors. And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner, and with like effect as in actions for the foreclosure of mortgages.

Court to declare rank of liens.

SEC. 827. Any number of persons claiming liens may join or intervene in the same action, and when separate actions are commenced, the Court may consolidate them. The Court may also allow, as part of the costs, the moneys paid for filing and recording the lien.

Separate actions may be consolidated.

Costs.

SEC. 828. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

Lien not to impair right to personal action.

SEC. 829. Except as otherwise provided in this Chapter, the provisions of this Code relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in, the proceedings mentioned in this Chapter.

Provisions applicable to proceedings under this Chapter.

## CHAPTER XLIX.

## OF CONTEMPTS.

**SECTION 830.** What acts or commissions are contempts.

- 831. Re-entry on property after eviction, when a contempt.
- 832. A contempt committed, in the presence of the Court may be punished summarily. When not so committed an affidavit or statement shall be made.
- 833. A warrant of attachment may issue or a notice to show cause.
- 834. Bail may be given by a person arrested under such warrant.
- 835. Sheriff must, upon executing the warrant, arrest and detain the person until discharged.
- 836. Bail bond, form and conditions of.
- 837. Officer must return warrant and undertaking, if any.
- 838. Hearing.
- 839. Judgment and penalty, if guilty.
- 840. If the contempt is the omission to perform any act, the person may be imprisoned until performance.
- 841. If a party fail to appear, proceedings.
- 842. Illness sufficient cause for non-appearance of party arrested. Confinement under arrests for contempt.
- 843. Judgment and orders in such cases final.

What acts or omission are contempts.

**SECTION 830.** The following acts or omissions, in respect to a Court of justice, or proceedings therein, are contempts of the authority of the Court:

1. Disorderly, contemptuous, or insolent behavior toward the Judge while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, Clerk, Sheriff, Coroner, or other person appointed or elected to perform a judicial or ministerial service;

4. Deceit or abuse of the process or proceedings of the Court by a party to an action or special proceeding;

5. Disobedience of any lawful judgment, order, or process of the Court;

6. Assuming to be an officer, attorney, counsel of a Court, and acting as such without authority;

7. Rescuing any person or property, in the custody of an officer by virtue of an order or process of such Court;

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the Court where the action is on the calendar for trial;

9. Any other unlawful interference with the process same. or proceedings of a Court;

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a Court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such Court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the Court;

12. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior Court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

SEC. 831. Every person dispossessed or ejected from or out of, any real property, by the judgment or process of any Court of competent jurisdiction, and who, not Re-entry on property after eviction, when a contempt. having right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the Court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt, the Court or Justice of the Peace must immediately issue an alias process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

SEC. 832. When a contempt is committed in the immediate view and presence of the Court, or Judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the Court, or Judge at chambers, an affidavit shall be presented to the Court, or Judge, of the facts A contempt committed in the presence of the Court may be punished summarily. constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officer. When not so committed an affidavit or statement shall be made.

SEC. 833. When the contempt is not committed in the immediate view and presence of the Court or Judge,

A warrant of attachment may issue, or a notice to show cause.

a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

Bail may be given by a person arrested under such warrant.

SEC. 834. Whenever a warrant of attachment is issued, pursuant to this Chapter, the Court or Judge must direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Sheriff must, upon executing the warrant arrest and detain the person until discharged.

SEC. 835. Upon executing the warrant of attachment, the Sheriff must keep the person in custody, bring him before the Court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Bail bond, form and conditions of.

SEC. 836. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the Court or Judge thereupon; or they will pay as may be directed, the sum specified in the warrant.

Officer must return warrant and undertaking, if any.

SEC. 837. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Hearing.

SEC. 838. When the person arrested has been brought up or appeared, the Court or Judge must proceed to investigate the charge; and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Judgment and penalty, if guilty.

SEC. 839. Upon the answer and evidence taken, the Court or Judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

If the contempt is omission to perform any act, the person may

SEC. 840. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have

performed it, and in that case the act must be specified in the warrant of commitment. be imprisoned until performance.

SEC. 841. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court or Judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding. If a party fail to appear, proceedings.

SEC. 842. Whenever, by the provisions of this Chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a Court or Judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance. Illness sufficient cause for non-appearance of party arrested. Confinement under arrests for contempt.

SEC. 843. The judgment and orders of the Court or Judge, made in cases of contempt, are final and conclusive. Judgment and orders in such cases final.

## CHAPTER L.

### VOLUNTARY DISSOLUTION OF CORPORATIONS.

#### SECTION 844. How dissolved.

- 845. Application, what to contain.
- 846. Application, how signed and verified.
- 847. Filing application and publication of notice.
- 848. Objections may be filed.
- 849. Hearing of application.
- 850. Judgment roll and appeals.

SECTION 844. A corporation may be dissolved by the District Court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose. How dissolved.

SEC. 845. The application must be in writing, and must set forth: Application, what to contain.

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

Application,  
how signed  
and verified.

SEC. 846. The application must be signed by a majority of the Board of Trustees, Directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

Filing applica-  
tion and publi-  
cation of no-  
tice.

SEC. 847. If the Judge is satisfied that the application is in conformity with this Chapter, he must order it to be filed with the Clerk, and that the Clerk give not less than thirty days notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements, posted up in three of the principal public places in the county.

Objections may  
be filed.

SEC. 848. At any time before the expiration of the time of publication any person may file his objections to the application.

Hearing of ap-  
plication.

SEC. 849. After the time of publication has expired, the Court may, upon five days notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements herein made are shown to be true, he must declare the corporation dissolved.

Judgment roll  
and appeals.

SEC. 850. The application, notices, and proof of publication, objections (if any), and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken as from judgments of the County Courts.

## CHAPTER LI.

### OF EMINENT DOMAIN.

SECTION 851. Purposes for which it may be exercised.

852. What estates in land may be acquired by condemnation.

853. Private property defined. Classes enumerated.

854. Facts necessary to be found by Court, before condemnation.

855. Parties may make location. May enter to make surveys.

856. Jurisdiction in District Court.

857. The complaint and its contents.

858. Summons, what to contain. How issued and served.

859. Who may defend. What the answer may show.

860. Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.

861. Court or jury to assess damages.

862. The date with respect to which compensation shall be assessed, and the measure thereof.

863. New proceedings to cure defective title.

864. Payment of damages, or deposit of bond therefor.

865. Damages, to whom paid.



866. Final order of condemnation, what to contain. When filed, title vests.
867. Putting plaintiff in possession.
868. Cos.s may be allowed, distribution thereof.
869. Rules of practice. New trials and appeals.

**SECTION 851.** Subject to the provisions of this Chapter, the right of eminent domain may be exercised in behalf of the following public uses: Eminent domain may be exercised.

1. Public buildings and grounds for the use of the Territory, and all other public uses authorized by the Legislature;

2. Public buildings and grounds for the use of any county, incorporated city, village, town or school districts, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village, or town; or for draining any county, incorporated city, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, village or town, or the inhabitants thereof;

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts and pipes, for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable;

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines;

5. By-roads leading from highways to residences and farms;

6. Telegraph lines;

7. Sewerage of any incorporated city.

**SEC. 852.** The following is a classification of the estates and rights in lands subject to be taken for public use: Estates and rights subject to condemnation.

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine;

Same.

2. An easement, when taken for any other use;

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Private property defined.

SEC. 853. The private property which may be taken under this Chapter, includes:

Classes enumerated.

1. All real property belonging to any person;

2. Lands belonging to this Territory; or to any county, incorporated city, or city and county, village or town, not appropriated to some public use;

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;

5. All rights of way for any and all the purposes mentioned in Section 851, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections and connections shall be made in manner most compatible with the greatest public benefit and least private injury;

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Facts necessary to be found by Court before condemnation.

SEC. 854. Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law;

2. That the taking is necessary to such use;

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

Parties may make location.

SEC. 855. In all cases where land is required for public use, the Territory or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this Chapter. The Territory or its

agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness, or malice. May enter to make surveys.

SEC. 856. All proceedings under this Chapter must be brought in the District Court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon. Jurisdiction in District Court.

SEC. 857. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs; The complaint and its contents.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;

3. A statement of the right of the plaintiff;

4. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with maps thereof;

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract.

All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the Court may consolidate or separate them, to suit the convenience of parties.

SEC. 858. The Clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner. Summons, what to contain. How issued and served.

SEC. 859. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint. Who may defend. What the answer may show.

SEC. 860. The Court shall have power:

1. To regulate and determine the place and manner

Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.

of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of Section 853;

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor;

3. To determine the respective rights of different parties seeking condemnation of the same property.

Court or jury to assess damages.

SEC. 861. The Court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under Subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad;

5. As far as practicable, compensation must be assessed for each source of damage separately.

The date with respect to which compensation shall be assessed, and the measure thereof.

SEC. 862. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value, at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as

provided in the last section. No improvements put <sup>same.</sup> upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

SEC. 863. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may <sup>New proceedings to cure defective title.</sup> again institute proceedings to acquire the same, as in this Chapter prescribed.

SEC. 864. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, <sup>Payment of damages, or deposit of bond therefor.</sup> at the time of or before payment, elect to build the fences and cattle guards; and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the Court in double the assessed cost of the same, to build such fences and cattle guards within eighteen months from the time the railroad is built on the land taken, and if such bond be given, need not pay the cost of such fences and cattle guard. In an action on such bond the plaintiff may recover reasonable attorney's fees.

SEC. 865. Payment may be made to the defendants <sup>Damages, to whom paid.</sup> entitled thereto, or the money may be deposited in Court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the Court, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

SEC. 866. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the Court must make a final <sup>Final order of condemnation, what to contain.</sup> order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the Recorder of the county, and thereupon the property <sup>When filed, title vests.</sup> described therein shall vest in the plaintiff for the purposes therein specified.

SEC. 867. At any time after trial and judgment entered, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into Court for the defendant, the full amount of the judgment, and such further sum as may be required by the Court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant if for any cause, the property shall not be finally taken for <sup>Putting plaintiff in possession.</sup>

Same.

public use, the District Court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceeding against the plaintiff on account thereof. The defendant, who is entitled to the money paid into Court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the Court. It shall be the duty of the Court, or a Judge thereof, upon application being made by such defendant, to order and direct that the money so paid into Court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. The Court may order the money to be deposited in the county treasury, and in such case it shall be the duty of the treasurer to receive all such moneys, duly receipt for and safely keep the same, and to pay out such moneys in such manner and at such times as the Court or the Judge thereof may direct; and for such duty he shall be liable to the plaintiff upon his official bond.

Costs may be allowed; distribution thereof.

SEC. 868. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the Court.

Provisions applicable to proceedings under this Chapter.

SEC. 869. Except as otherwise provided in this Chapter, the provisions of this Code relative to civil actions and new trials and appeals, are applicable to and constitute the rules of practice in the proceedings in this Chapter.

Exceptions.

SEC. 870. Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

## CHAPTER LII.

## OF CHANGE OF NAMES.

SECTION 871. Jurisdiction.

872. Application for change of name, how made.

873. Publication of petition for.

874. Hearing of application and remonstrance.

SECTION 871. Applications for change of names must be heard and determined by the District Courts. Jurisdiction.

SEC. 872. All applications for change of names must be made to the District Court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, or scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order, or society, may by petition, apply to the District Court of the county in which the property of said corporation is situated, for a change of its corporate name. Such petition must be signed by the trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings must be had as upon applications for changes of names of natural persons. Application for change of name, how made.

SEC. 873. A copy of such petition must be published for four successive weeks, in some newspaper printed in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such petition must be posted at three of the most public places in the county for a like period, and proofs must be Corporation, change of name of.



made of such publication before the petition can be considered.

Hearing of application and remonstrance.

SEC. 874. Such application must be heard at such time during term as the Court may appoint, and objections may be filed by any person who can, in such objections, show to the Court good reason against such change of name. On the hearing the Court may examine, upon oath, any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name or dismissing the application, as to the Court may seem right and proper.

## CHAPTER LIII.

### OF ARBITRATIONS.

SECTION 875. What may be submitted to arbitration, and when.

876. Submission to arbitration to be in writing.

877. Submission may be entered as an order of the Court. Revocation.

878. Powers of arbitrators.

879. Majority of arbitrators may determine any question.

880. Award to be in writing. When judgment to be entered.

881. Award may be vacated in certain cases.

882. Court may, on motion, modify or correct the award.

883. Decision, on motion, subject to appeal, but not the judgment entered before motion.

884. If submission be revoked and an action brought, what to be recovered.

What may be submitted to arbitration, and when.

SECTION 875. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

Submission to arbitration to be in writing.

SEC. 876. The submission to arbitration must be in writing, and may be to one or more persons.

Submission may be entered as an order of the Court.

SEC. 877. It may be stipulated in the submission, that it be entered as an order of the Probate Court, or of the District Court, for which purpose it must be filed with the Clerk of a county where the parties, or one of them, resides. The Clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered, the submission cannot be

revoked without the consent of both parties. The arbitrators may be compelled by the Court to make an award, and the award may be enforced by the Court in the same manner as a judgment. If the submission is not made an order of the Court, it may be revoked at any time before the award is made. Revocation.

SEC. 878. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon. Powers of arbitrators.

SEC. 879. All the arbitrators must meet and act together during the investigation; but when met, a majority may determine any question. Before acting, they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding. Majority of arbitrators may determine any question. They must be sworn.

SEC. 880. The award must be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the Court, the award must be filed with the Clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award must be entered by the Clerk in the judgment book, and thereupon has the effect of a judgment. Award to be in writing. When judgment to be entered.

SEC. 881. The Court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion. Award may be vacated in certain cases.

1. That it was procured by corruption or fraud;
2. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced;
3. That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted, to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed

Court may, on motion, modify or correct the award. **SEC. 882.** The Court may, on motion, modify or correct the award, where it appears:

- 1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein;
- 2. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted;
- 3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Decision, on motion, subject to appeal, but not the judgment entered before motion. **SEC. 883.** The decision upon either motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment, if entered before a motion made, cannot be subject to appeal.

If submission be revoked and an action brought, what to be recovered. **SEC. 884.** If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER LIV.  
OF SOLE TRADERS.

- SECTION 885.** Who may become sole traders.
- 886. Notice, how given and what to contain.
  - 887. Petition, what to contain and when filed.
  - 888. May have five hundred dollars of community or husband's property.
  - 889. Who may oppose it, and how.
  - 890. Trial or hearing.
  - 891. Decree, what it must be.
  - 892. Oath, copy of order to be recorded.
  - 893. Rights and liabilities of sole traders.
  - 894. Sole trader must maintain her children.
  - 895. Husband of sole trader not liable for debts.

Who may become sole traders. **SECTION 885.** A married woman may become a sole trader by the judgment of the District Court of the county in which she has resided for six months next preceding the application.

Notice, how given and what to contain. **SEC. 886.** A person intending to make application to become a sole trader, must publish notice of such intention in a newspaper published in the county, or if none, then in a newspaper published in an adjoining county, for four successive weeks. The notice must specify the term, and the day upon which application will be made,

the nature and place of the business proposed to be conducted by her, and the name of her husband.

SEC. 887. Ten days prior to the day named in the notice, the applicant must file a verified petition, setting forth: Petition, what to contain and when filed.

1. That the application is made in good faith, to enable the applicant to support herself, or herself and others dependent upon her, giving their names and relation;

2. The fact of insufficient support from her husband, and the causes thereof, if known;

3. Any other grounds of application which are good causes for a divorce, with the reason why a divorce is not sought; and,

4. The nature of the business proposed to be conducted, and the capital to be invested therein, if any, and the sources from which it is derived.

SEC. 888. The applicant may invest in the business proposed to be conducted, a sum derived from the community property or of the separate property of the husband, not exceeding five hundred dollars. May have \$500 of community or husband's property.

SEC. 889. Any creditor of the husband may oppose the application, by filing in the Court (prior to the day named in the notice) a written opposition verified, containing either: Who may oppose it and how.

1. A specific denial of the truth of any material allegation of the petition; or setting forth,

2. That the application is made for the purpose of defrauding the opponent; or,

3. That the application is made to prevent, or will prevent, him from collecting his debt.

SEC. 890. On the day named in the notice, or on such other day to which the hearing may be postponed by the Court, the applicant must make proof of publication of the notice hereinbefore required, and the issues of fact joined, if any, must be tried as in other cases; if no issues are joined, the Court must hear the proofs of the applicant, and find the facts in accordance therewith. Trial or hearing.

SEC. 891. If the facts found sustain the petition, the Court must render judgment, authorizing the applicant to carry on, in her own name and on her own account, the business specified in the notice and petition. Decree, what it must be.

SEC. 892. The sole trader must make and file with the Clerk of the Court an affidavit, in the following form: Oath, copy of order to be recorded.

"I, A. B., do, in the presence of Almighty God, solemnly swear that this application was made in good

Same. faith, for the purpose of enabling me to support myself (and any dependent, such as husband, parent sister, child, or the like, naming them, if any), and not with any view to defraud, delay or hinder any creditor, or creditors of my husband; and that of the moneys so to be used by me in business, not more than five hundred dollars have come, either directly or indirectly, from my husband. So help me, God."

A certified copy of the decree, with this oath indorsed thereon, must be recorded in the office of the Recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

Rights and liabilities of sole traders.

SEC. 893. When the judgment is made and entered, and a copy thereof, with the affidavit provided for in the last section duly recorded, the person therein named is entitled to carry on the business specified, in her own name, and the property, revenues, moneys, and credits so by her invested, and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband; and she thereafter has all the privileges of and is liable to all legal processes provided for debtors and creditors, and may sue and be sued alone, without being joined with her husband; *Provided*, however, that she shall not be at liberty to carry on said business in any other county than that named in the published notice, until she has recorded in such other county a copy of said judgment and affidavit.

Sole trader must maintain her children.

SEC. 894. A married woman who is adjudged a sole trader is responsible and liable for the maintenance of her minor children.

Husband of sole trader not liable for debts.

SEC. 895. The husband of a sole trader is not liable for any debts contracted by her in the course of her sole trader's business, unless contracted upon his written consent.

## CHAPTER LV.

### EVIDENCE—JUDICIAL KNOWLEDGE.

Certain facts of general notoriety assumed to be true. Specification of such facts.

SECTION 896. Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of all legal expressions;
2. Whatever is established by law;
3. Public and private official acts of the legislative,

executive, and judicial departments of this Territory and <sup>Same.</sup> of the United States;

4. The seals of all the Courts of this Territory and of the United States;

5. The accession to office and the official signatures and seals of office of the principal officers of Government in the legislative, executive, and judicial departments of this Territory and of the United States;

6. The existence, title, national flag, and seal of every State or sovereign recognized by the executive power of the United States;

7. The seals of Courts of admiralty and maritime jurisdiction, and of Notaries Public;

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the Court may resort for its aid to appropriate books or documents of reference.

## CHAPTER LVI.

### WITNESSES.

**SECTION 897.** All persons capable of perception and communication may be witnesses.

898. Persons who cannot testify.

899. Persons in certain relations to parties prohibited.

900. Judge or a juror may be witness.

901. When an interpreter to be sworn.

**SECTION 897.** All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although, in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

All persons capable of perception and communication may be witnesses.

**SEC. 898.** The following persons cannot be witnesses:

Persons who  
cannot testify.

1. Those who are of unsound mind at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

3. Parties to an action or proceeding, or in whose behalf an action or proceeding is prosecuted, against an executor or an administrator, upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person.

Persons in cer-  
tain relations  
to parties pro-  
hibited.

SEC. 899. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the Church to which he belongs;

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Judge or a  
juror may be  
witness.

SEC. 900. The Judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the Court or Judge to order the trial to be postponed or suspended, and to take place before another Judge or jury.



**SEC. 901.** When a witness does not understand and When an interpreter to be sworn. speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any Court or Judge to appear before such Court or Judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpoena. Any person so summoned who fails to attend at the time and place named in the summons, is guilty of a contempt.

## CHAPTER LVII.

### PUBLIC WRITINGS.

**SECTION 902.** Every citizen entitled to inspect and copy public writings.

903. Public officers bound to give copies.

904. Public and private statutes.

905. Four kinds of public writings.

906. Books containing laws presumed to be correct.

907. Public seal authenticates a law or document.

908. Other evidence of laws of other States and Territories.

909. Recitals in statutes, how far evidence.

910. Judicial record defined.

911. Record, how authenticated as evidence.

912. Record of a foreign country, how authenticated.

913. Oral evidence of a foreign record.

914. Manner of proving other official documents.

915. Public record of private writing evidence.

916. Entries in official books primary evidence.

917. Justice's judgment in other States, how proved.

918. Same.

919. Contents of other official certificates.

920. Certificates of purchase primary evidence of ownership.

921. Entries made by officers or Boards primary evidence.

**SECTION 902.** Every citizen has a right to inspect and Every citizen entitled to inspect and copy public writings. take a copy of any public writing of this Territory, except as otherwise expressly provided by statute.

**SEC. 903.** Every public officer having the custody of Public officers bound to give copies. a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.

**SEC. 904.** Statutes are public or private. A private Public and private statutes defined. statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Four kinds of public writings.

SEC. 905. Public writings are divided into four classes:

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records kept in this territory, of private writings.

Books containing laws presumed to be correct.

SEC. 906. Books printed or published under the authority of a State, Territory, or foreign country, and purporting to contain the statutes, code, or other written law of such State, Territory, or country, or proved to be commonly admitted in the tribunals of such State, Territory, or country as evidence of the written law thereof, are admissible in this Territory as evidence of such law.

Certified copy of law or public writing.

SEC. 907. A copy of the written law or other public writing of any State, Territory, or country, attested by the certificate of the officer having charge of the original, under the public seal of the State, Territory, or country, is admissible as evidence of such law or writing.

Other evidence of laws of other States and Territory.

SEC. 908. The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a State, other Territory, or foreign country, as are also printed and published books of reports of decisions of the Courts of such State, Territory, or country, commonly admitted in such Courts.

Recitals in statutes, how far evidence.

SEC. 909. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Judicial record defined.

SEC. 910. A judicial record is the record or official entry of the proceedings in a Court of Justice, or of the official act of a judicial officer, in an action or special proceeding.

Record, how authenticated as evidence.

SEC. 911. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the Clerk or other person having the legal custody thereof. That of a State or Territory may be proved by the attestation of the Clerk and the seal of the Court annexed, if there be a Clerk and seal, together with a certificate of the Chief Judge or presiding magistrate, that the attestation is in due form.

Record of foreign country, how authenticated.

SEC. 912. A judicial record of a foreign country may be proved by the attestation of the Clerk, with the seal of the Court annexed, if there be a Clerk and seal, or of the legal keeper of the record, with the seal of his

office annexed, if there be a seal, together with a certificate of the Chief Judge, or presiding magistrate, that the person making the attestation is the Clerk of the Court or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the Chief Judge or presiding magistrate must be authenticated by the certificate of the Minister or Ambassador, or a Consul, Vice-Consul, or Consular Agent of the United States in such foreign country. Same

SEC. 913. A copy of the judicial record of a foreign country is also admissible in evidence, upon proof: Oral evidence of a foreign record.

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

2. That such original was in the custody of the Clerk of the Court or other legal keeper of the same; and,

3. That the copy is duly attested by a seal which is proved to be the seal of the Court where the record remains, if it be the record of a Court; or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original.

SEC. 914. Other official documents may be proved, as follows: Manner of proving other official documents.

1. Acts of the Executive of this Territory, by the records; and of the United States, by the records of the Departments of the United States, certified by the heads of those departments respectively. They may also be proved by public documents, printed by the order of the Legislature or Congress, or either house thereof;

2. The proceedings of the Legislature of this Territory or of Congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order;

3. The acts of the Executive or the proceedings of the Legislature of a sister State or Territory in the same manner;

4. The acts of the Executive, or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the Executive of the United States:

5. Acts of a municipal corporation of this Territory or of a Board or department thereof, by a copy, certified

Same.

by the legal keeper thereof, or by a printed book published by the authority of such corporation;

6. Documents of any other class in this Territory, by the original, or by a copy, certified by the legal keeper thereof;

7. Documents of any other class in a sister State, or Territory, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the Secretary of State, Judge of the Supreme, Superior, or County Court, or Mayor of a city of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original;

8. Documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original;

9. Documents in the departments of the United States Government, by the certificate of the legal custodian thereof.

Public record  
of private writing  
evidence.

SEC. 915. A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

Entries in official books  
prima facie  
evidence.

SEC. 916. Entries in public or other official books or records, made in the performance of his duty by a public officer of this Territory, or by another person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.

Justice's judgment, how  
proved.

SEC. 917. A transcript from the record or docket of a Justice of the Peace of a sister State or Territory, of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the Justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

Same.

SEC. 918. There must be attached to the transcript a certificate of the Justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the Clerk or prothonotary of the county in which the Justice resided at the time of rendering the judgment, under the seal of the county, or the seal of the Court of Common Pleas or County Court or Court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a Justice of the Peace in the

county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the Justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness. Same.

SEC. 919. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a Court having a seal, under the seal of such Court. Official certificates, contents of.

SEC. 920. A certificate of purchase, or of location, of any lands in this Territory, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes. Certificates of purchase primary evidence of ownership.

SEC. 921. An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is *prima facie* evidence of the facts stated in such entry. Entries made by officers and Board, prima facie evidence.

## CHAPTER LVIII.

### PRIVATE WRITINGS.

SECTION 922. Manner of making seal.

923. Books, maps, etc., how far evidence.

924. When in possession of adverse party, notice to be given.

925. Writings called for and inspected may be withheld.

926. Where there is a subscribing witness, the proof.

927. Other witnesses may also testify.

928. When evidence of execution not necessary.

929. Entries of decedents evidence in specified cases.

930. Private writings acknowledged and certified.

931. Instrument acknowledged.

932. Contents of writing, how proved.

SECTION 922. A public seal in this Territory is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any a Public and private seals, how made.

Scroll or sign.

substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a sister State or Territory or foreign country, and there recognized as a seal, must be so regarded in this Territory.

Books, maps, etc., how far evidence.

SEC. 923. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

When in possession of adverse party, notice to be given.

SEC. 924. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

Writings called for and inspected may be withheld.

SEC. 925. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Writing, how may be proved.

SEC. 926. Any writing may be proved either:

1. By any one who saw the writing executed; or,
2. By evidence of the genuineness of the handwriting of the maker; or,
3. By a subscribing witness.

Other witnesses may also testify.

SEC. 927. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

When evidence of execution not necessary.

SEC. 928. Where, however, evidence is given that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

Entries of decedents, evidence in specified cases.

SEC. 929. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as *prima facie* evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it;
2. When it was made in a professional capacity, and in the ordinary course of professional conduct;

3. When it was made in the performance of a duty specially enjoined by law.

SEC. 930. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing, in the same manner as if it were a conveyance of real property. Private writings acknowledged and certified.

• SEC. 931. Every instrument conveying or affecting real property, acknowledged, or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit, or otherwise, that the original is not in the possession or under the control of the party producing the certified copy. Certified copies, or copies of record, admissible without further proof.

SEC. 932. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases: Contents of writing, how proved.

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made;

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice;

3. When the original is a record or other document in the custody of a public officer;

4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute;

5. When the original consists of numerous accounts or other documents, which cannot be examined in Court without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in subdivisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one and two, either a copy or oral evidence of the contents.



## CHAPTER LIX.

## INDISPENSABLE EVIDENCE.

**SECTION 933.** To prove perjury and treason.

934. Will to be in writing.

935. Transfer of real property to be in writing.

936. Last section not to extend to certain cases.

937. Agreement not in writing, when invalid.

938. When valid.

939. Representation of credit by writing.

To prove perjury and treason, more than one witness required.

**SECTION 933.** Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

Will to be in writing.

**SEC. 934.** A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

Transfer of real property to be in writing.

**SEC. 935.** No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Last section not to extend to certain cases.

**SEC. 936.** The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any Court to compel the specific performance of an agreement, in case of part performance thereof.

Agreement not in writing, when invalid.

**SEC. 937.** In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, <sup>same.</sup> or miscarriage of another, except in the cases provided for in the next section;

3. An agreement made upon consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

SEC. 938. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing. Engagement to answer for obligation of another, when deemed original.

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving

Same.

from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale;

5. Where the holder of an instrument for the 'payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

Representation  
of credit by  
writing.

SEC. 939. No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be charged.

## CHAPTER LX.

### PRODUCTION OF EVIDENCE.

- SECTION 940.** Writing altered. who to explain.
941. Subpoena for witness defined.
942. Subpoena, how issued.
943. Subpoena, how served.
944. How, if witness be concealed.
945. When a witness is compelled to attend.
946. Person present compelled to testify.
947. Disobedience, how punished.
948. Forfeiture therefor.
949. Warrant may issue to bring witness, when.
950. Contents of warrant.
951. If witness be a prisoner, how brought.
952. On whose motion.
953. How examined.
954. Affidavits and depositions, how taken.
955. Evidence of publication, what.
956. Where filed.
957. Affidavits to be used in this Territory.
958. If made in another State or Territory of the United States.
959. If made in a foreign country, before whom taken.
960. Certificate of the Clerk.
961. Testimony of a witness out of the Territory.
962. In the Territory, when taken.
963. Testimony of witness out of Territory.
964. Proper interrogatories may be prepared.
965. Authorities and duties of Commissioner.
966. Trial, when postponed.
967. Deposition, by whom used.
968. Depositions may be taken before a Judge, etc.
969. Manner of taking depositions.
970. When deposition excluded.
971. A deposition once taken may be read at any time:

- 972. Deposition in this Territory to be used in other States or Territories.
- 973. How to procure witness upon commission.
- 974. How, if no commission.
- 975. Deposition, how taken.
- 976. Witnesses not under examination may be excluded.
- 977. Witnesses bound to attend when subpoenaed.
- 978. Witnesses bound to answer questions.
- 979. Witnesses protected from arrest.
- 980. Arrest to be made void.
- 981. To make affidavit if arrested.
- 982. Court to discharge witnesses from arrest.
- 983. An offer equivalent to tender.
- 984. Whoever pays entitled to receipt.

**SECTION 940.** The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that, he may give the writing in evidence, but not otherwise.

Writing altered, who to explain.

**SEC. 941.** The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpoena for witness defined.

**SEC. 942.** The subpoena is issued as follows:

Subpoena, how issued.

1. To require attendance before a Court, or at the trial of an issue therein, it is issued in the name of the Court before which the attendance is required, or in which the issue is pending;

2. To require attendance out of the Court, before a Judge, Justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it is issued by the Judge, Justice, or any other officer before whom the attendance is required;

3. To require attendance before a Commissioner appointed to take testimony by a Court of a foreign country, or of the United States, or of any other State or Territory in the United States, or of any other district or county within this Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any Judge or Justice of the Peace in places within their respective juris-

Same.

diction, with like power to enforce attendance; and, upon certificate of contumacy to said Court, to punish contempt of their process, as such Judge or Justice could exercise if the subpoena directed the attendance of the witness before their Courts in a matter pending therein.

Subpoena, how served.

SEC. 943. The service of a subpoena is made by showing the original and delivering a copy, or a ticket containing its substance, to the witness personally, or by leaving a copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

How, if witness is concealed.

SEC. 944. If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any Court or Judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpoena; and the Sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

When a witness is compelled to attend.

SEC. 945. A witness is not obliged to attend as a witness before any Court, Judge, Justice, or any other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Person present compelled to testify.

SEC. 946. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such Court or officer.

Disobedience, how punished.

SEC. 947. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

SEC. 948. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

SEC. 949. In case of failure of a witness to attend,

the Court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the county to arrest the witness and bring him before the Court or officer where his attendance was required. Warrant may issue to bring witness, when.

SEC. 950. Every warrant of commitment, issued by a Court or officer pursuant to this Chapter, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this Chapter, must be directed to the Sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the District Court. Contents of warrant.

SEC. 951. If the witness be a prisoner, confined in a jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer for the purpose of being orally examined, may be made as follows: If witness be prisoner, how brought.

1. By the Court itself in which the action or special proceeding is pending, unless it be a Justice's Court.

2. By a Justice of the Supreme Court, Judge of the District Court or Probate Judge of the county where the action or proceeding is pending, if pending before a Justice's Court or before a Judge or other person out of Court.

SEC. 952. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. On whose motion.

SEC. 953. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition. How examined.

SEC. 954. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of this Code. Affidavits and depositions, how taken.

SEC. 955. Evidence of the publication of a document or notice required by law, or by an order of a Court or Judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his fore- Evidence of publication, what.

man or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which, the publication was made.

Where filed.

SEC. 956. If such affidavit be made in an action or special proceeding pending in a Court, it may be filed with the Court or a Clerk thereof. If not so made, it may be filed with the Recorder of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the Judge of the Court or officer having it in custody, is *prima facie* evidence of the facts stated therein.

Affidavits to be used in this Territory, before whom may be taken.

SEC. 957. An affidavit to be used before any Court, Judge, or officer of this Territory, may be taken before any Judge or Clerk of any Court, or any Justice of the Peace or Notary Public in this Territory.

If made in another State or Territory, before whom taken.

SEC. 958. An affidavit taken in another State or Territory of the United States, to be used in this Territory, may be taken before a Commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory or before any Notary Public in another State or Territory, or before any Judge or Clerk of a Court of record having a seal.

If made in a foreign country, before whom taken.

SEC. 959. An affidavit taken in a foreign country to be used in this Territory, may be taken before an Ambassador, Minister, Consul, Vice Consul, or Consular Agent of the United States, or before any Judge of a Court of record having a seal, in such foreign country.

Certificate of the Clerk, if taken before a Judge of a Court out of this Territory.

SEC. 960. When an affidavit is taken before a Judge or a Court in another State or Territory, or in a foreign country, the genuineness of the signature of the Judge, the existence of the Court, and the fact that such Judge is a member thereof, must be certified by the Clerk of the Court, under the seal thereof.

Testimony of a witness out of the Territory, when taken.

SEC. 961. The testimony of a witness out of the Territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

In the Territory, when taken.

SEC. 962. The testimony of a witness in this Territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, after a question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;



2. When the witness resides out of the county in same. which his testimony is to be used;

3. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required;

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

SEC. 963. The deposition of a witness out of this Territory may be taken upon commission issued from the Court, under the seal of the Court, upon an order of the Judge or Court, or Probate Judge, on the application of either party, upon five days previous notice to the other. Testimony of witness out of Territory; taken upon commission issued under seal, upon notice. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any Judge or Justice of the Peace, or person named as commissioner by the officer issuing it. If issued to any country out of the United States, it To whom issued. may be directed to a Minister, Ambassador, Consul, Vice Consul, or Consular Agent of the United States in such country, or to any person agreed upon by the parties.

SEC. 964. Such proper interrogatories, direct and cross, as the respective parties may prepare to be settled, Proper interrogatories may be prepared, or may be waived by the parties. if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the Commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

SEC. 965. The Commission must authorize the Commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or, when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the Court, in a sealed envelop, directed to the Clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance. Authorities and duties of Commissioner.

SEC. 966. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the Court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it. Trial, when postponed for reason of non-return of commission.

SEC. 967. The deposition mentioned in this Chapter may be used by either party on the trial or other pro- Deposition, by whom used.

ceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Depositions may be taken before a Judge, etc., upon notice to the adverse party.

SEC. 968. Either party may have the deposition taken of a witness in this Territory, in either of the cases mentioned in Section 962, before a Judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a Judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order must be served with the notice.

Manner of taking depositions.

SEC. 969. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the Clerk of the Court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under Subdivisions 2, 3 and 4, of Section 962, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

May be used by either party on the trial.

When deposition excluded.

SEC. 970. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

A deposition once taken may be read at any time.

SEC. 971. When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding, or in any other action between the

same parties, upon the same subject, and is then deemed the evidence of the party reading it.

SEC. 972. Any party to an action or special proceeding in a Court or before a Judge of a sister State or Territory, may obtain the testimony of a witness residing in this Territory to be used in such action or proceeding, in the cases mentioned in the next two sections.

Deposition in this Territory to be used in other States

SEC. 973. If a commission to take such testimony has been issued from the Court or Judge before whom such action or proceeding is pending, on producing the commission to a District or a Probate Judge, with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpoena to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

How to procure witness upon commission.

SEC. 974. If a commission has not been issued, and it appears to a District or Probate Judge, or Justice of the Peace, by affidavit satisfactory to him:

How, if no commission.

1. That the testimony of the witness is material to either party;

2. That a commission to take the testimony of such witness has not been issued;

3. That, according to the law of the State or Territory where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such Judge or Justice, will be received in the action or proceeding;

—He must issue his subpoena, requiring the witness to appear and testify before him at a specified time and place.

SEC. 975. Upon the appearance of the witness, the Judge or Justice must cause his testimony to be taken in writing, and must certify and transmit the same to the Court or Judge before whom the action or proceeding is pending, in such manner as the law of that State or Territory requires.

Depositions, how taken.

SEC. 976. If either party requires it, the Judge may exclude from the Court room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses.

Witnesses not under examination may be excluded.

SEC. 977. A witness, served with a subpoena, must attend at the time appointed, with any papers under his control required by the subpoena, and answer all pertinent and legal questions; and, unless sooner discharged, must remain until the testimony is closed.

Witnesses bound to attend when subpoenaed.

SEC. 978. A witness must answer questions legal and pertinent to the matter in issue, though his answer may

Witnesses  
bound to answer questions.

establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

Witnesses protected from arrest when attending or going or returning.

SEC. 979. Every person who has been, in good faith, served with a subpoena to attend as a witness before a Court, Judge, Commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest to be made void, and party making arrest liable, etc.

SEC. 980. The arrest of a witness, contrary to the preceding section, is void, and, when willfully made, is a contempt of the Court; and the person making it is responsible to the witness, arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

To make affidavit if arrested.

SEC. 981. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpoena to attend as a witness before a Court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued; and,

2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest;

3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

Court to discharge witnesses from arrest.

SEC. 982. The Court or officer issuing the subpoena, and the Court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of Section 979. If the Court have adjourned before the arrest, or before application for the discharge, a Judge of the Court or a Probate Judge may grant the discharge.

**SEC. 983.** An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property. An offer equivalent to tender.

**SEC. 984.** Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery. Whoever pays is entitled to receipt.

## CHAPTER LXI.

### PROCEEDINGS TO PERPETUATE TESTIMONY.

- SECTION 985.** Evidence may be perpetuated.  
**986.** Manner of application for order.  
**987.** Notice of time and place to be given.  
**988.** Manner of taking the deposition.  
**989.** Deposition to be filed.  
**990.** When the evidence may be produced.  
**991.** Effect of the deposition.

**SECTION 985.** The testimony of a witness may be taken and perpetuated as provided in this Chapter. Evidence may be perpetuated.

**SEC. 986.** The applicant must produce to a District Judge, or to a Probate Judge, a petition, verified by the oath of the applicant, stating: Manner of application for order.

1. That the applicant expects to be a party to an action in a Court in this Territory, and, in such case, the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

The Judge, to whom such petition is presented, must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory,

Same.

must be personally served, and if unknown, such notice must be served on the Recorder of the county where the property to be affected by the evidence is situated, or the Judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the Judge, for the same period required for the publication of summons. The Judge must also designate in his order the Recorder of the county to whom the depositions must be returned when taken.

Appo'ntee of  
Judge, author-  
ity of.

SEC. 987. The person appointed by the Judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the Judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service or publication of the notice; to take the deposition of the witness named in the order of the Judge, or in the commission, or, if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of tak-  
ing the depo-  
sition.

SEC. 988. The examination must be by question and answer, and if the testimony is to be taken in another State or Territory, it must be taken upon a commission to be issued by the Judge allowing the examination, under the seal of the Court of which he is Judge, and upon interrogatories, to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the Judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the Recorder of the county designated in the order of the Judge allowing the examination, who shall file the same when received. The Judge allowing the examination shall file with the Recorder the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers filed,  
prima facie  
evidence.

SEC. 989. The petition and order, and papers filed by the Judge, as provided in the last section, or a certified copy thereof, are *prima facie* evidence of the facts stated

therein to show compliance with the provisions of this chapter.

SEC. 990. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witness, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

When the evidence may be produced.

SEC. 991. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

Effect of the deposition.

## CHAPTER LXII.

### ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION 992. Judicial and certain officers authorized to administer oaths.

993. Form of ordinary oath to a witness.

994. Form may be varied to suit witness' belief.

995. Same.

996. Any person who prefers it may declare or affirm.

SECTION 992. Every Court, every Judge, or Clerk of any Court, every Justice, and every Notary Public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Judicial and certain officers authorized to administer oaths.

SEC. 993. An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between—and —, shall be the truth, the whole truth, and nothing but the truth, so help you God."

Form of ordinary oath to a witness.

SEC. 994. Whenever the Court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the

Form may be varied to suit witness' belief.



usual form of administration, which, in his opinion, is more solemn or obligatory, the Court may, in its discretion, adopt that mode.

Same.

SEC. 995. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Any person  
who prefers it  
may declare or  
affirm.

SEC. 996. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm (or declare) that," etc., as in Section 993.

# PROCEEDINGS IN CRIMINAL CASES.

## AN ACT

TO AMEND AN ACT ENTITLED AN ACT TO REGULATE PROCEEDINGS IN CRIMINAL CASES IN THE COURTS OF JUSTICE IN THE TERRITORY OF IDAHO. APPROVED JANUARY 14, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows :*

SEC. 1. Sections one hundred and ninety-three, one hundred and ninety-four, one hundred and ninety-five, one hundred and ninety-six, one hundred and ninety-seven, one hundred and ninety-eight, one hundred and ninety-nine and two hundred of said act are hereby repealed. Sections repealed.

SEC. 2. Subdivision eight of section three hundred and thirty-nine of said act is hereby amended so as to read as follows : Section amended.

*Eighth*—Having formed or expressed an unqualified opinion or belief, that the defendant is guilty or not guilty of the offense charged.

SEC. 3. Section three hundred and fifty-six of said act is hereby amended so as to read as follows :

If the indictment is for an offense punishable with death, two counsel on each side may argue the cause to the jury : If it is for another offense the Court may, in its discretion, restrict the argument to one counsel on each side. Indictment.

SEC. 4. Section three hundred and seventy-seven of said act is hereby amended so as to read as follows:

The jury sworn to try an indictment for any offense, except murder, may at any time during the trial, before the submission of the cause, in the discretion of the Court, be permitted to separate, or they may be kept together, in charge of a proper officer. In case the Court orders the jury to be kept together, the Sheriff

Same.

must provide a suitable place for the board and lodging of the jury, at the expense of the county, and at each recess and adjournment, the officer must be sworn to keep the jury together until the next meeting of the Court; to suffer no person to speak to or communicate with them, or either of them, nor to do so himself, on any subject connected with the trial, and to return them into Court at the next meeting thereof. In all trials for murder, the jury must be kept together.

Fines and forfeitures.

SEC. 5. Section six hundred and sixty-five of said act is hereby amended so as to read as follows:

Except in cases wherein it is otherwise expressly authorized by law, all fines and forfeitures collected in any Court must, without any deduction of costs, be paid into the County Treasury of the County in which the Court is held.

Judgment.

SEC. 6. Section six hundred and seventy-five of said act is hereby amended so as to read as follows:

When a judgment is rendered in any Court imposing a fine, the judgment shall also be that the defendant pay the costs of the suit, which costs shall be taxed and collected in like manner as costs in a civil action are taxed and collected.

SEC. 7. This act to take effect and be in force from and after 12 o'clock M., May 21st, A. D. 1881.

Approved January 22, 1881.

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## CRIMINAL PRACTICE.

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### AN ACT

TO AMEND SECTION FIVE HUNDRED AND THIRTY-NINE OF AN ACT ENTITLED "AN ACT TO REGULATE PROCEEDINGS IN CRIMINAL CASES IN THE COURTS OF JUSTICE IN THE TERRITORY OF IDAHO." APPROVED JANUARY 14, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section five hundred and thirty-nine of said act is amended to read as follows:

SEC. 539. When a person shall attend before a grand

jury, or the District Court, as a witness on behalf of the people, upon a subpoena, or in pursuance of a recognizance, such person shall receive the sum of twenty-five cents a mile one way for each mile actually traveled, but no person shall receive more than one mileage under this section, at one term of the District Court; and such person shall also receive one dollar per day for each day's actual attendance as such witness. Such mileage and *per diem* shall be paid out of the County Treasury of the county where such District Court is held, upon the certificate of the Clerk of said Court.

Mileage of  
witnesses.

Per diem of  
witnesses.

Payment.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10th, 1881.

## CRIMES AND PUNISHMENTS.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT CONCERNING CRIMES AND PUNISHMENTS." APPROVED JANUARY 14, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That section 68 of the above entitled act be amended so as to read as follows:

SEC. 68. Every person, who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennie, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat, or pig, not his or her own property, but belonging to some other person, or cause the same to be done, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Defacement of  
brand on cattle,  
etc., and pen-  
alty for.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved Feb. 9, 1881.

## REVENUE—COUNTY AND TERRITORIAL.

### AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT TO PROVIDE A UNIFORM SYSTEM OF TERRITORIAL AND COUNTY REVENUE, AND FOR THE ASSESSING AND COLLECTING THE SAME." APPROVED JANUARY 15, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows :*

SECTION 1. That section one of said act be amended so as to read as follows:

Amendment to  
Sec. 1.

SEC. 1. An annual ad valorem tax of forty cents upon each one hundred dollars value of taxable property for Territorial purposes, upon the assessed value of all property in this Territory, not by said act exempted from taxation, is hereby levied and directed to be collected and paid; and upon the same property the Board of County Commissioners of each County is also hereby authorized and empowered to levy and collect annually, a tax for County expenditures not exceeding one hundred and fifty cents on each one hundred dollars of taxable property; and upon the same property the Board of County Commissioners of each County of this Territory, is also hereby authorized and empowered to levy and collect annually, if they deem necessary, a tax of twenty-five cents on each one hundred dollars taxable property, not by said act exempted from taxation, to be expended for the repair and construction of bridges within the County, as the Board of County Commissioners may order and direct: and upon the same property the Board of County Commissioners of each County is also hereby authorized and empowered to levy and collect annually, such additional and special taxes as the laws of this Territory may authorize and require them to levy and collect; *Provided*, however, that whenever the Board of

County Commissioners levy any tax, they shall cause <sup>same</sup> such levy to be entered on the record of their proceedings, and shall direct their Clerk to deliver a certified copy thereof to the Assessor, Tax Collector, Auditor and Treasurer, each of whom shall file said copy in his office; *Provided*, that the County Commissioners of the Counties of Cassia and Alturas are authorized and empowered to levy and collect annually a tax for County expenditures not to exceed one hundred and seventy-five cents on each one hundred dollars taxable property.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 28, 1881.

## REVENUE LAW.

### AN ACT

TO AMEND SECTION 56 OF AN ACT ENTITLED "AN ACT TO PROVIDE A UNIFORM SYSTEM OF TERRITORIAL AND COUNTY REVENUE, AND FOR THE ASSESSING AND COLLECTING OF THE SAME." APPROVED JANUARY 15, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That Section 56 of an act entitled, "An Act to provide a uniform system of Territorial and County Revenue and for the assessment and collection of the same," approved January 15th, 1875, be and is amended to read as follows: <sup>Section amended.</sup>

SEC. 56. Before satisfaction be entered upon any mortgage or lien, or any release of any mortgage or lien, other than mortgages given to secure the purchase money of the property mortgaged, be recorded, or filed for record, in the several County Recorders' offices of this Territory, the County Recorder shall be satisfied by affidavit reduced to writing, either taken before him, or any officer authorized to administer oaths, which affidavit may be made by the mortgagee or the person holding such mortgage or lien, or his, or their agent or attorney, and which shall be filed in said County Recorder's office.

Affidavit as to  
payment of  
taxes on mort-  
gages.

Said affidavit shall be substantially in the following form:

Entry of sa-  
tisfaction without  
affidavit as to  
payment of  
taxes.

I do solemnly swear, or affirm, that all taxes for Territorial or County purposes assessed on the mortgage, or debt secured by this mortgage, or lien, had been paid. And if any person shall knowingly swear falsely in making such affidavit, he shall be deemed guilty of perjury and punished accordingly; but if any County Recorder shall enter or permit to be entered satisfaction without the filing of such affidavit, he shall be liable on his official bond to pay the County the sum of five hundred dollars, which may be recovered by an action, which it shall be the duty of the prosecuting or District Attorney to prosecute, and he shall have for each prosecution twenty-five per centum of the amount recovered.

SEC. 2. This Act to take effect and be in force from and after its passage.

Approved December 30, 1880.

## REVENUE.

### AN ACT

#### TO AMEND SECTION 76 OF THE REVENUE LAW.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section seventy-six of an act entitled "An act to provide a uniform and system of Territorial and County Revenue, and for the assessing and collecting the same," approved January 15, 1875, shall be so amended as to read as follows: Section 76. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or distilled liquors, except the agricultural productions of the Territory (when sold by producers thereof), and except such as are sold by auctioneers under license according to law, shall pay quarterly an amount of money for license as required by the class in which such person is placed, by the tax collector of the county, under the provisions of the succeeding section; *Provided always*, that nothing herein shall be so construed as to extend to physicians, apothecaries, or chemists, as to any wines or spirituous liquors

License.

Liquors in pre-  
scriptions.



which they may use in the preparation or compounding <sup>same</sup> of medicines, or selling the same for medicinal or mechanical purposes.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## REVENUE—COUNTY AND TERRITORIAL.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE A UNIFORM SYSTEM OF TERRITORIAL AND COUNTY REVENUE, AND FOR THE ASSESSING AND COLLECTING THE SAME," APPROVED JANURAY 15, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section seventy-seven of said act is amended to read as follows:

SEC. 77. Every person who shall sell or vend any goods, wares or merchandise, or wines, or distilled liquors, drugs or medicines, jewelry or wares of precious metals; and persons who keep horses or mules, and carriages or other vehicles for rent or hire, or run omnibuses, coaches, cabs or hacks, for hire or transportation, except stages transporting United States mails, and except mules, horses, or animals used in transportation of goods, shall obtain from the tax collector of the county in which such business may be transacted, for each of the branches of business in this and the preceding section enumerated, a license for the transaction of that business, at the following rates, to-wit:

All persons dealing as aforesaid, shall be classed according to the average monthly sale or sales effected, in the following manner—that is to say: Those who are estimated to make average monthly sales to the amount of twenty thousand dollars or more, shall constitute the first class; of ten thousand dollars, and less than twenty thousand dollars, shall constitute the second class; of five thousand dollars, and less than ten thousand dollars,

License for dealing in certain business.

First class.

Sec nd class.

Third class.	shall constitute the third class; of two thousand five hundred dollars, and less than five thousand dollars, shall
Fourth class.	constitute the fourth class; of one thousand dollars, and less than two thousand five hundred dollars, shall con-
Fifth class.	stitute the fifth class; of five hundred dollars, and less
Sixth class.	than one thousand dollars, shall constitute the sixth
Seventh class.	class; of three hundred dollars, and less than five hun-
Eighth class.	dred dollars, shall constitute the seventh class; of two
Ninth class.	hundred dollars, and less than three hundred dollars,
Tenth class.	shall constitute the eighth class; of one hundred dollars,
	and less than two hundred dollars, shall constitute the
	ninth class; of all amounts under one hundred dollars,
	the tenth class. The license for the first class shall be
Rates of license.	given upon the payment of twenty-five dollars per month; for the second class twenty dollars per month; for the third class fifteen dollars per month; for the fourth class ten dollars per month; for the fifth class eight dollars per month; for the sixth class six dollars per month; for the seventh class four dollars per month; for the eighth class three dollars per month; for the ninth class two dollars per month; for the tenth class one dollar per month,
Sale of liquors.	<i>Provided</i> , that the sale of liquors and wines, by persons licensed under this section shall not be in less quantities than one quart; and no license shall be issued for a less time than three months; and every person required by this act, or the act to which this is amendatory, to obtain a license, where the amount or class of the license is regulated by the amount or average amount of monthly or quarterly business or sales, shall, before any such license shall be issued to him, take and subscribe an affidavit before the tax collector, or other officer issuing such license, stating the total amount of business done or sales made by him, or the firm or company of which he is a member, or for which he desires a license, during the last preceding quarter, and such affidavit shall be preserved in the office of the license collector, and if such amount is greater than the amount for which such person, firm or company procured a license for such preceding quarter, such person, firm or company, shall pay for and procure a license for such preceding quarter, according to his or their actual business or sales, in addition to the license theretofore procured, before such person, firm or company shall receive any license for the current or succeeding quarter; but this section shall not relieve any person, firm or company from the penalties imposed by section eighty-four, or by any other provision of law; and if any person in making such affidavit shall willfully
Additional license.	

swear falsely, he shall, upon conviction, suffer the pains <sup>same.</sup> and penalties of perjury.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## REVENUE—TERRITORIAL AND COUNTY.

### AN ACT

TO REGULATE THE MANNER OF COLLECTING TERRITORIAL AND COUNTY REVENUE IN IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The assessor shall be *ex-officio* tax collector. Tax collector. and he is hereby authorized and empowered to receive, and collect all per capita or poll taxes, and all taxes to be collected on real and personal property as provided by law; and he shall have the powers provided by law, and hereinafter provided to enforce the collection and payment of taxes, and he shall pursue the same course, when not inconsistent with this act, as is provided in the general revenue act of the Territory to be pursued by the sheriff as tax collector. The assessor shall be allowed as full compensation for his services, and the Compensation. services of his deputies as assessor and tax collector, fifteen per centum of all poll taxes collected, and seven (7) per centum of all other taxes by him collected, except school taxes, to be paid quarterly out of the county treasury, and the assessor shall receive no additional percentage or compensation for the subsequent assessment, or the collection of the taxes thereon; *Provided*, That the sheriff shall continue to be the collector of all Territorial, Territorial county and miscellaneous licenses, except municipal li- licenses. censes, and all laws applicable thereto are continued in force as far as relates to the collection of such licenses.

SEC. 2. The board of County Commissioners of each county shall require of the assessor a bond as tax collector, in any sum not to exceed fifteen thousand dollars nor less than five thousand dollars, for the faithful per'orm- Bond of tax collector.

Same.

ance of his duties as tax collector; and it is hereby made the duty of the tax collector to pay over to the county treasurer, at least once in four weeks, all tax moneys in his possession, taking the treasurer's receipt for the same.

SEC. 3. All laws or parts of laws of this Territory, providing for the collection of taxes, now in force, and not in conflict with this act, shall be, and the same are hereby made applicable to the assessor; and the auditor of each county shall deliver the assessment roll, and the subsequent assessment roll, and the delinquent tax list to the assessor, at the same times respectively that he is now required to deliver the same to the sheriff and district attorney respectively.

Delinquent  
list

SEC. 4. On the second Monday of November in each year, the tax collector shall, at the close of his official business on that day, enter upon the assessment roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which have not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the auditor a statement of said amount, verified by the oath of himself, or deputy, and shall proceed to make out and file in the office of the auditor a list of all persons and property then owing any taxes, verified by the oath of himself or deputy, which list shall be completed by the third Monday of November, and shall be known as the delinquent list; and to enable the tax collector to make out said list, no taxes shall be received by him on the assessment roll after making the entry provided for in this section.

Notice of sale.

SEC. 5. On or before the fourth Monday in November the tax collector shall cause the delinquent list mentioned in section four to be published, giving in said publication the name of the owner (when known) of all real estate, of all the improvements, together with such a condensed description of the property that it may be easily known, and also a similar condensed description of any real estate or improvements assessed to unknown owners, and also the name of every party delinquent for any tax or personal property, and also opposite each name or description give the amount of taxes, including the costs, due from each delinquent person or property, which shall be one dollar for each name or assessment of property, in addition to the fifteen per cent. hereinafter provided; all of which costs and percentage shall be paid into the county treasury. The publication by this section required shall be made by one insertion one time a week for three

successive weeks, in any newspaper published in said <sup>same</sup> county, or a supplement thereof, or, if so directed by the board of county commissioners, by posting up a written or printed copy of said list, in at least three conspicuous public places in the county. Said publication shall also designate the time and place of commencing the sale, which time shall not be less than twenty-one days from the first appearance of the publication, and the place of sale shall be in front of the county court house. On the day and at the place fixed for the final sale, or on some subsequent day to which he may have postponed it, of which he shall give due notice, the tax collector shall, between the hours of ten o'clock A. M. and three o'clock P. M., commence to sell the real estate and improvements advertised, and upon which the taxes and costs have not been paid, commencing at the head of the list and continuing it alphabetically through, unless the sale is adjourned until another day; and power is hereby given to the tax collector to postpone the day of commencing the sale, and to postpone the sale from day to day after it has been commenced, if he deems best for the interests of the Territory and county, or if the tax-payers will be served by such postponement; *Provided, however,* The whole sale of real estate or improvements shall be completed within two weeks from the day first fixed as the day of sale. The owner in the possession, or the possessor of any real estate offered for taxes due by him, may designate in writing to the tax collector, prior to the commencement of the sale, what portion of the property he wishes bid on, if any person is willing to take less than the whole; but if the owner in possession or possessor does not so designate, then the tax collector shall designate, and the person who will take the least quantity or smallest part of the land, or, in case an undivided interest is assessed, then the smallest portion of such interest, and pay the taxes and costs due, including one dollar, which the tax collector shall be entitled to receive for a duplicate certificate of sale, shall be declared to be the purchaser, and he shall pay the taxes and costs thereon before 10 o'clock A. M., the following day, or the property shall, on the next day before the regular list is commenced, be again put up and sold, as though it had not been offered; and any person bidding off any property and not taking it shall be excluded from again bidding on any property advertised in the delinquent list.

Sale of property.

SEC. 6. In all cases when such property is real or

Place of sale.

fixed, the sale shall be at the court house door; in all other cases it shall be the duty of the tax collector to seize any property whatever belonging to the delinquent, and sell so much thereof as may be necessary to pay taxes and costs. If any real estate or the improvements thereon cannot be sold for the amount of taxes and charges due thereon, it shall be passed over for the time being, but shall, before the close of the sale, be re-offered for sale; and if the same cannot be sold for the amount aforesaid, the clerk of the board of county commissioners shall bid off the same for the county for such amount; and all such real estate or the improvements thereon so bid off for the county shall continue liable to be taxed in the same manner as if they were owned by individuals, and such taxes and charges thereon shall be a lien on such real estate or improvements, and shall be paid out of the county treasury, while such lands belong to the county, but no lands so bid off for the county shall be offered for sale for any tax levied thereon subsequent to such bid until it shall have been redeemed, or shall be sold by the county. When such real estate or improvements so bid off for the county shall not be redeemed as provided by law, the tax collector shall execute to the county in his official name, a deed of release therefor, witnessed and acknowledged in like manner as deeds to individuals, which shall have the same force and effect as conveyances executed to individuals for real estate and improvements sold for taxes.

SEC. 7. At any time after the third Monday in November, and before the sale of the property of any delinquent tax-payer, he may pay the taxes due thereon, together with fifteen per cent. additional.

Certificate of sale.

SEC. 8. After receiving the taxes and costs for any property sold, the tax collector shall issue to the purchaser a certificate that he has sold such property, (describing it) specifying the amount of taxes and costs, and that the same was sold for the payment of delinquent taxes for the year 18—, dating such certificate on the day of sale.

Deed for property.

SEC. 9. The purchaser shall file such certificate in the office of the county recorder, and it shall constitute a valid lien against the property specified therein, and shall entitle the purchaser, at the expiration of the time specified by law within which such property may be redeemed, to a deed, which the tax collector shall officially execute, and for which the tax collector shall receive

from the purchaser the sum of two dollars and fifty cents.

SEC. 10. All property so sold for delinquent taxes may be redeemed by any person interested therein, as in this act provided, by paying to the purchaser, or depositing with the tax collector for him the amount of taxes and costs, and the additional percentage prescribed by this act; in which case the tax collector shall mark the word "redeemed," the date, and by whom redeemed, across the certificate on file in the recorder's office, and also mark the word "redeemed," on the assessment roll, for which services the tax collector shall receive from the redemptioner the sum of one dollar. Redemption of property.

SEC. 11. Said delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, shall be *prima facie* evidence in any court to prove the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

SEC. 12. An act to establish a code of civil procedure for Idaho Territory, so far as the same is not inconsistent with the provisions of this act, is hereby made applicable to proceedings under this act: and any deed derived from a sale of real property under this act shall be conclusive evidence of title except as against actual frauds, or prepayment of the taxes upon which such sale was made, and shall entitle the holder thereof to a writ from the district court to obtain possession of such property; *Provided*, That the tax collector, in selling said property, shall only sell the smallest quantity that any purchaser will take and pay the taxes and all costs, in all cases to be designated by the owner or possessor thereof, if present; *And provided, further*, That when property is sold belonging to minors, or persons under legal disability, they shall have until six months after such disability is removed to redeem said property by paying the whole amount of the taxes, and all subsequent taxes and interest paid by and due to the purchaser of said sale; but this provision shall not apply when the executor or administrator of the estate, or the father, or, in case of his death, the mother or guardian of such minor children, has been personally notified of such taxes and sales: *And provided, further*, That the real estate so sold for taxes may be redeemed from such sale, as in case of sale upon execution, as provided in civil cases, Amount to be sold.



Same.

by paying to the tax collector the total amount of taxes and all costs, with fifty per cent. thereon; *And provided further*, That if the same is paid within three months from the date of the certificate of sale, it shall be for the total amount of the taxes and all costs, with twenty-five per cent. thereon. All moneys collected under this act shall, without delay, be paid to the treasurer of the county, to be distributed to the proper funds; and each collection and the date thereof, shall be entered opposite the proper name, or property, in the delinquent tax list, which shall be open to public inspection.

Payment of  
money to  
treasurer.

SEC. 13. The tax collector shall, on receipt of any money for taxes, enter the same on his delinquent list, opposite the name of the person delinquent, or opposite the description of property; and shall, on the first Monday in each month, after the time fixed in this act for the commencement of sales of the property of delinquent tax-payers, pay to the county treasurer all moneys collected by him for taxes, taking duplicate receipts for the amount so paid, one of which receipts he shall, on the same day, file with the auditor, and shall, at the same time, file with said auditor a list of all sales made by him up to that date for taxes, under the provisions of this act, stating therein the names of the delinquents, if known, or, if unknown, a description of the property. He shall, on the Saturday next preceding the first Monday in March in each year, pay to the county treasurer all moneys received by him for taxes, and not previously paid over, taking duplicate receipts therefor, one of which shall be filed with the auditor, and shall at the same time file with the auditor a list of all sales made by him, and not previously filed, as herein provided. He shall also on the day last named, make and file with the county auditor an affidavit stating that he has paid to the county treasurer all moneys collected by him for taxes prior to that date and filed the receipts therefor, and that the several lists filed by him, as herein directed, contain all the sales made by him under the provisions of this act. On the first Monday in December in each year the tax collector shall attend at the office of the county auditor with the delinquent list, or lists, and the auditor shall then carefully compare the same with the treasurer's receipts and statements filed by the tax collector, and if the same shall have been found to be correct, the auditor shall give to the tax collector a receipt specifying the same. The tax collector shall at the same time deliver to the auditor a written statement of all delinquent taxes upon said

Statement of  
delinquent  
taxes.

delinquent list, or lists, remaining uncollected, or for <sup>same</sup> which sales have not been made, with his reason in detail for not being able to collect the same, or for not making sales; and the auditor shall immediately file the said delinquent list, or lists, and statement, with the clerk of the board of equalization, and the board of equalization shall revise the same by striking off such taxes as cannot be collected; the delinquent list, or lists, shall then be returned to the auditor, who shall note the changes made, and shall then return the same to the tax collector. The county auditor shall, in his next report to the territorial auditor, or controller, state the amount stricken off the delinquent list, or lists, by the board of equalization.

SEC. 14. This act shall not effect any action or actions <sup>Actions pending.</sup> now pending for taxes now delinquent, or the enforcement of any judgment now obtained, or which may hereafter be obtained, for any such taxes now delinquent. The assessor shall advertise, and after twenty-one days' notice, as heretofore provided, sell all property upon which there is a lien for delinquent taxes, which attached prior to the passage of this act, and for which an action has not been commenced, in the same manner as delinquent taxes are collected under this act; *Provided*, Said property shall not be sold before the first Monday in July, A. D. 1881. All officers now having in their possession delinquent tax lists, upon which there are uncollected taxes upon which suit has not been brought, are required within thirty days after the passage of this act, to deliver the same to the assessor of the proper county.

SEC. 15. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 16. This act to take effect and be in force from and after its passage.

Approved Feb. 10, 1881, at 2 o'clock P. M.

## POLL TAXES.

### AN ACT

#### TO SECURE THE COLLECTION OF POLL TAXES.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

**Poll tax books.** SECTION 1. It shall be the duty of the officer charged by law with the collection of poll taxes in the several counties of this Territory, during the month of January next succeeding any general election, to copy into a book furnished him by the Board of County Commissioners of his county, to be known as the "Poll Tax Book," the name of every person on said poll lists subject to the payment of a poll tax. The names shall be alphabetically arranged according to the first letter of the family name, and said book shall be kept in his office as a public record. Such officer shall from time to time add to the lists in said book, under the proper letter, the names of any residents of his county, or of any persons who may become residents of said county, or who may attain their majority, who are subject to the payment of a poll tax. And any resident of the county may require such officer to insert in said book, under the proper letter, any omitted name of any resident of said county who is subject to the payment of a poll tax, and for the willful omission from the proper place in said book of any resident of his county subject to the payment of a poll tax, such officer shall be guilty of a misdemeanor in office, and he shall forfeit to the school fund of his county the sum of twenty-five dollars for each name so willfully omitted, to be recovered in an action on his official bond by the County Superintendent of Public Instruction.

**Willful omission of names.**

SEC. 2. Such officer shall each year collect one poll tax from every person in his county required by law to pay such tax, and at the regular meeting of the board of County Commissioners, in October each year, he shall produce his poll tax books to the board, and he shall

be charged with one poll tax for every name in said book, and shall only be discharged by showing that he has collected the tax of every person named in said book, <sup>Collection of poll taxes.</sup> or that those from whom he has failed to collect such poll tax have died, removed from the county, or become exempt, or that for some other sufficient reason the tax in such case could not be collected; and every poll tax from which he is not thus discharged by the board, he shall collect on or before the fifteenth day of November then next ensuing, or shall be finally charged therewith; and the board shall cause action to be brought upon the official bond of such officer for the amount of such final charge, together with the amount of any other poll taxes he has willfully failed to collect; and in any such action, proof that the name of any delinquent is on his poll tax book, and that he was not discharged from the collection of the tax from such delinquent by the Com- <sup>Delinquents.</sup> missioners, or that any resident of the county had given him the name of any delinquent as that of a person subject to the payment of such tax, shall be *prima facie* evidence of such willful neglect by the officer, and shall only be rebutted by proof that the tax is paid, or that the alleged delinquent is exempt or not subject to poll tax in the county, or that it could not be collected by the means afforded by law.

SEC. 3. No name once entered on said poll tax book shall be erased therefrom, except by the direction of the Board of County Commissioners, on the ground that the party is not subject to the tax; and any name once placed on a poll tax book shall be carried to the new books, successively, to be prepared after each general election, unless so directed to be omitted. <sup>Names on poll tax book.</sup>

SEC. 4. Within sixty days from the passage of this act, the officers charged with the collection of such tax in the several counties of the Territory, shall prepare such poll tax books for their respective counties from the poll lists of the last general election, which shall be the poll tax books of their respective counties until another is prepared after the next general election, as directed by this act. <sup>Preparation for poll tax books.</sup>

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 16, 1881.

## SCHOOLS.

### AN ACT

#### TO AMEND THE GENERAL SCHOOL LAW OF IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That section 8 of an act entitled, "An Act to establish a Public School System and to provide for the maintenance and supervision of Public Schools," approved February 21st, 1879, be and the same is hereby amended by the addition of a third sub-division, to read as follows: Third,—To prepare and have blanks printed for Teachers' licenses in such form as to comply with the requirements of section 6 of this act; the said blank certificates or licenses shall be furnished to County School Superintendents as other blanks are supplied.

Blank for  
teachers,  
licenses.

SEC. 2. Amend section 18 by striking out all after the words "Provided further," and inserting in lieu thereof the following:

Public moneys  
for schools.

That each school district now organized, or which may hereafter be organized, within the Territory, shall keep at least three months school in each school year, to entitle it to draw any of the public moneys, and all moneys remaining in any school fund to the credit of any district, which had been apportioned to the same for the preceding school year, shall, after the first Monday in September of each year, revert to the County School Fund of the proper county, to be re-apportioned as other school moneys are apportioned.

SEC. 3. Section 21 of said act shall be amended to read as follows:

That whenever, at least, four heads of families, representing at least 10 children of school age, petition the County School Superintendent for the organization of a new school district, or for the sub-division of, or change in, the boundaries of an old one, the School

Superintendent shall immediately notify the Clerk of the ~~School District~~<sup>Board of Trustees</sup> of the district, or districts, to be affected by the change proposed; that a petition is on file in his office, and shall state in said notice the proposed change or changes to be made, and that the said petition will be presented to the Board of County Commissioners at their next regular meeting for final action. The County School Superintendent shall present to the board of County Commissioners at their first regular meeting after having received such petition, this said petition, together with all information in his possession relative to the said ~~petition~~<sup>petition for new districts</sup>, and if twenty days shall have elapsed since the Clerk of the Board of Trustees of the district to be affected by said change, was notified, then the Board of County Commissioners shall take into the consideration of said petition any remonstrances that may be presented, and may approve, modify, or disapprove of said petition, and their disapproval shall only be upon the grounds that such organization, or change of boundaries, would ~~be unjust to individuals or the community~~<sup>Ground of disapproval</sup>. It shall be the duty of the Clerk of the Board of School Trustees, when notified by the School Superintendent of a proposed change in his district, to post notices in at least three public places in his district, that a petition has been filed in the office of the School Superintendent stating the proposed change to be made, and call a public meeting of the inhabitants of said district, at the school house in said district, or if there be no school house, then at some suitable place in said district, said public meeting to be held within five days from the time of posting said notices; which said meeting shall be for the purpose of affording to any person or persons who might be injuriously affected by said petition the opportunity of remonstrating against said petition, provided that this section shall not be construed to authorize the increase of ~~districts in Ada county beyond the limitation fixed in the act creating the Independent School District of Boise City~~<sup>districts in Ada county</sup>.

SEC. 4. Section 26, shall be amended by striking out all after the word "qualified" in the seventh line, and inserting in lieu thereof the following; *Provided, That* the annual election in Nez Perce and Idaho counties shall be held on the first Monday in January. <sup>Time of holding election in certain counties.</sup>

SEC. 5. Section 42 of said act, shall be amended to read as follows: Each county school examiner shall hold four meetings each year for the examination and licensing of teachers; said meeting shall be held in the county seat;

**Examination of teachers.** the first of said meetings to be held on the first Wednesday in February, 1881, and quarterly thereafter; the school examiner shall give ten days notice of said meeting by having the same published in a newspaper having a general circulation in the county, and if there be no paper published in the county, then by notices in at least five public places in the county; the examinations there held shall be held public, and shall continue from day to day until all the applicants shall have been examined; said examination shall be conducted by both

**Notices.**

**Aid for examiner.** written and oral questions and answers; said county examiner may, if he deem it expedient, call to his assistance any one who is a practical teacher.

**Branches for examination.** SEC. 6. Section 43 of said act shall be amended to read as follows: The county examiner shall examine persons applying for certificates to teach in orthography, reading, penmanship, arithmetic, grammar, modern geography, and history of the United States, asking questions to test the general knowledge of the candidates, and their ability to impart oral instruction, relating to the subjects treated in the text books; and no person shall be granted a certificate who, in the judgment of the examiner, does not possess the ability to impart oral instruction to such a degree as to render the applicant a successful teacher. County examiners are authorized to issue

**Certificates.** three grades of certificates, viz.: First grade shall be valid in the county for two years, to those who shall answer correctly not less than seventy-five per cent. of the questions asked in any one branch, and not less than

**First grade.** ninety per cent. on the general average. Second grade valid for one year to those who answer correctly not less than fifty per cent. in any branch, with a general average

**Second grade.** of seventy-five per cent.; third grade to be valid in a given district only for six months to those who answer correctly not less than forty per cent. of any one branch, with a general average of fifty per cent.

**Third grade.**

**Permits.** SEC. 7. Section 44 of said act shall be amended by adding the following; *Provided*, that the examiner may grant permits to teach to those who in his opinion are qualified to teach, which permits shall answer all the purposes of certificates till the next quarterly examination.

**Stationery for examination.** SEC. 8. The Board of County Commissioners shall audit and allow bills for blank books, stationery, &c., as may be required in the examination of teachers, and warrants may be drawn upon the general school fund of the county.



SEC. 9. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

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## TERRITORIAL SECRETARY.

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### AN ACT

#### REGULATING THE FEES OF THE TERRITORIAL SECRETARY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That it shall be lawful for the Territorial Secretary to charge and collect the same fees for official certificates, copying, administering oaths and taking acknowledgments as are now allowed by law to County Recorders and Notaries Public for similar services. Fees.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 9, 1881.

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## COUNTY COMMISSIONERS.

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### AN ACT

ENTITLED "AN ACT TO AMEND AN ACT, CREATING THE BOARD OF COUNTY COMMISSIONERS, AND DEFINING THEIR DUTIES AND POWERS," APPROVED JANUARY 15, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section 13 of said act is amended to read as follows:

SEC. 13. The Board of Commissioners shall cause to

Court house,  
jail, etc.

Offices for  
county officers.

Contracts.

Book of record  
and stationery.

be erected and furnished, a court house, jail, and such other public buildings as may be necessary; and shall, when necessary, provide offices, with necessary furniture, for the Sheriff, the County Recorder and Auditor, Clerk of the District Court, County Treasurer, and Probate Judge, and shall draw warrants on the general county fund in payment of the expense of the same; *Provided*, that the contract for the erection of any such building shall be let, after thirty days' notice for proposals, to the lowest bidder, who shall give security for the completion of any contract he may make respecting the same; And, *Provided further*, no contract shall be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars.

The Board shall also provide all necessary books of Record for the County Recorder and Auditor, County Treasurer, County Assessor and Collector, Clerk of the District Court, Probate Court, and the Board.

They shall also provide stationery for the use of the Board and so much as is necessary for the use of the other county officers in the transaction of official business for which no fee is provided by law.

SEC. 2. All acts and parts of acts in conflict with this Act, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 4, 1881.

## COUNTY OFFICERS—FEES OF JUSTICES OF THE PEACE.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT DEFINING THE DUTIES AND FEES OF COUNTY OFFICERS," APPROVED JANUARY 13, A. D. 1871.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That Section 10 of an act entitled, "An Act defining the duties and fees of County Officers," approved January 13th, 1871, is hereby amended so as to

read as follows: Section 10. Every justice of the peace may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law: For filing each paper, twenty-five cents; for issuing any summons, writ or process, by which action is commenced, fifty cents; for entering such cause on his docket including all docket entries before judgment, fifty cents; for subpoena to witness, twenty-five cents; for administering an oath or affirmation, including jurat and certificate, twenty-five cents; for issuing writ of attachment or of arrest, or for delivery of property, one dollar; for entering any final judgment, for each folio, twenty-five cents; for taking and approving any bond or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to bond or undertaking when required by law, after exception to sureties, one dollar; for swearing a jury, fifty cents; for taking depositions per folio, thirty cents; for entering satisfaction of judgment, fifty cents; for copy of judgment, order, docket, proceedings, or paper in his office, per folio, twenty-five cents; for issuing commission to take testimony, fifty cents; for making up and transmitting transcript and papers on appeal, two dollars; for making up and transmitting papers on change of venue, including copy, certificate and order, one dollar; for issuing search warrant, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate to the recorder, five dollars; for all services and proceedings before a Justice of the Peace in a criminal action or proceeding on examination, when an examination is not waived, or trial upon an issue of fact, six dollars; when an examination is waived, or there is a plea of guilty, three dollars; for taking bail after commitment in criminal cases, fifty cents; for entering an action without process, fifty cents; for entering judgment by confession, and only on affidavit as required in the District Court, in full for all services before execution, one dollar.

Fees for Justices of the Peace.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 9, 1881.

## COUNTY TREASURERS.

### AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT CONCERNING COUNTY TREASURERS," APPROVED JANUARY 12, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That section eleven (11) of said act be amended so as to read as follows:

Amending Sec.  
11, of an act  
concerning.

So soon as there be sufficient fund in the treasury of the county, to redeem the orders or warrants drawing interest, the County Treasurer shall give notice in some newspaper in his county, or if no newspaper be printed in his county, then by written or printed notice, posted upon the court house door, stating therein that he is ready to redeem said orders or warrants; and from the date of such notice, said orders or warrants shall cease to draw interest.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 10th, 1881.

## OFFICE OF DISTRICT ATTORNEY FOR EACH COUNTY.

### AN ACT

CREATING THE OFFICE OF DISTRICT ATTORNEY FOR EACH OF THE ORGANIZED COUNTIES OF IDAHO TERRITORY, AND DEFINING THEIR DUTIES AND COMPENSATION.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The office of District Attorney for each

of the organized counties of this Territory is hereby created. Creation.

SEC. 2. Such District Attorneys shall be elected, for a regular term, at the general election in the year one thousand eight hundred and eighty two, and biennially thereafter. Their term of office shall commence on the first Monday in January next succeeding their election and continue two years, and until their successors are elected and qualified. Election. Term of office.

SEC. 3. The bond of District Attorneys to be elected or appointed under this act shall be in the sum of two thousand dollars; and be conditioned as follows: Bond.

Whereas, the above bounden . . . . . was elected (or appointed) District Attorney of the County of . . . . ., on the . . day of . . . . ., A. D. . . . ., now therefore the condition of the above obligation is such that if the said . . . . . shall faithfully perform his duties as such District Attorney, and pay over, in the manner prescribed by law, all moneys which shall come into his hands by virtue of his office, and deliver to his successor in office all books, records, papers, and other things belonging to his said office, then the above obligation shall be void, otherwise to remain in full force.

SEC. 4. No person shall be eligible, or be elected to or hold the office of District Attorney under this act who is not an attorney and counselor at law, duly licensed to practice as such in the District Courts of the Territory, and District Attorneys shall not hold any other county or any Territorial office, during their term of office as such District Attorneys. Eligibility.

SEC. 5. When there shall be no District Attorney for the county, or when he is absent from the Court, or when he shall have acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged, and for which he is to be indicted or tried, or when he is near of kin to the party to be indicted or tried on a criminal charge, or when he is unable to attend to his duties, the District Court may by an order, to be entered in the minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such District Attorney; and the person so appointed shall have all the powers of the District Attorney while so acting, and shall receive the fees of the District Attorney for all services by him performed. In case of absence, etc. Court to appoint.

SEC. 6. It shall be the duty of the District Attorney: Duties.

1. To prosecute or defend all actions, applications, or

Where the  
people a party.

motions, civil or criminal, in the District Court of his county, in which the people, or the Territory, or county is interested, or a party; and when the place of trial is changed, in any such action or proceeding, to another county, he shall prosecute or defend the same in such other county;

In criminal  
case.

2. To prosecute all criminal actions before the Probate and Justices' Courts of his county, other than those exercising the police jurisdiction of incorporated cities and villages; and upon the request of magistrates to conduct all criminal examinations which may be had before such magistrates; and prosecute or defend all civil actions before the Probate and Justices' Courts of the county, in which the people, or the Territory, or the County is interested, or a party;

Advice to Com-  
missioners.

3. To give advice to the board of County Commissioners and other officers of his county, when requested, in all matters in which the people, or the Territory, or County is interested, or relating to the discharge of the official duties of such board or officers;

Attend Grand  
Jury.

4. To attend when requested by any grand jury, for the purpose of examining witnesses before them; to give them advice in any legal matter before them; to draw bills of indictment, informations and accusations; to issue subpoenas and other process requiring the attendance of witnesses;

Disposal of  
money col-  
lected.

5. On or before the first Monday in each month to pay over all money collected or received by him during the preceding month, belonging to the county or Territory, to the County Treasurer, and take his receipt therefor, and to file on the first Monday of January in each year, in the office of the Auditor of his county an

To file account.

account, verified by his affidavit, of all money received by him during the preceding year, by virtue of his office, for fines, forfeitures, penalties, or costs, specifying the name of each person from whom he receives the same, the amount received from each, and the cause for which the same was paid; and for every neglect or refusal to pay over such moneys, or to render such account, he shall be guilty of a misdemeanor, and be fined not less than one hundred, nor more than five hundred dollars;

6. To perform all other duties required of him by any law.

SEC. 7. When any District Attorney shall receive any money for fines, forfeitures, penalties, or costs, he shall deliver to the person paying the same, duplicate

receipts therefor, one of which shall be filed by such person in the office of the County Treasurer. Receipts for money received.

SEC. 8. No District Attorney shall receive any fee or reward for or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the Territory, People, or County, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced but not determined, shall depend; and no law-partner of any District Attorney shall be engaged in the defense of any suit, action, or proceeding in which said District Attorney appears on behalf of the People, Territory, or County. Restrictions.

SEC. 9. The District Attorney shall receive for compensation the sum of three hundred dollars each per annum, which shall be paid half yearly from the Territorial Treasury, as now paid to the District Attorneys of this Territory; and the following fees shall be paid out of the treasury of the respective counties, as other current expenses are paid: Compensation.

For every prosecution for a felony upon a plea of not guilty, where the punishment may be death, one hundred dollars;

For every prosecution for a felony upon a plea of not guilty, where the punishment is imprisonment in the Territorial prison, fifty dollars; Fees.

For every prosecution for a misdemeanor upon a plea of not guilty, twenty-five dollars;

For every examination before a magistrate, twenty dollars; ten per cent. of all moneys collected by him on forfeited bonds, undertakings and recognizances, or by civil action;

For every prosecution for a felony or misdemeanor where the defendant pleads guilty, or where the action is determined upon an issue of law, one half the foregoing fees. If the District Attorney of one county shall be required to go to another county to transact any business as District Attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business, in addition to his salary and fees. Whenever upon the trial of a person upon an indictment it shall appear to the satisfaction of the Court that the accused is poor, and unable to procure the services of counsel, the Court may appoint counsel to conduct the defense of the accused, for which service such counsel



## DISTRICT COURTS IN EACH COUNTY.

### AN ACT

ESTABLISHING DISTRICT COURTS IN EACH OF THE ORGANIZED COUNTIES OF THIS TERRITORY, AND PROVIDING FOR THE EXPENSES THEREOF.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Establishment.

SECTION 1. District Courts are hereby established, to be held in each of the counties of this Territory which have been or may hereafter be organized by law, for the purpose of hearing and determining all matters and causes arising under the laws of the Territory.

Justice's compensation.

SEC. 2. There shall be paid to each of the Justices of the Supreme Court, out of the Territorial Treasury, for each term of a District Court held by him for the trial and disposition of causes, and the transaction of business under the laws of the Territory in other counties than that in which he resides, the sum of one hundred dollars, for his personal expenses in traveling and holding such terms; *Provided*, Congress shall not increase their compensation.

To hold two terms a year unless commissioners certify that only one term is necessary.

SEC. 3. In order to avail themselves of the benefit of this act, each of said Justices must, after A. D. 1881, hold at least two terms of the District Court a year, in each of the organized counties in his district, unless the board of County Commissioners of any county or counties shall certify, in the manner prescribed by the next section, that in their opinion not more than one term is necessary, in which case only one term need be held in such county or counties. There shall be at least one term held in each year in each of the organized counties.

Commissioners to certify that only one term is necessary.

SEC. 4. The board of Commissioners of each organized county in this Territory, at their regular meeting held next before the annual term of the Supreme Court, in each year, if in their opinion but one term of the

District Court will be necessary, in their county in the year next succeeding such term of the Supreme Court, must make a certificate to that effect, and forthwith transmit the same, by mail or express to the clerk of the Supreme Court.

SEC. 5. Each of said Justices may, semi-annually, on the first day of January and July of each year, make and certify an account against the Territory showing the number of such terms of District Court that have been held by him during the six months next preceding the date of such account, and transmit the same to the Territorial Controller; and upon the receipt of such account, said Controller shall issue to the Justice so certifying, a Territorial warrant at the rate of one hundred dollars for each such term so certified to have been held by him. Such warrants shall be drawn upon the general fund of the Territory, and shall be paid in the same manner as other warrants on that fund are paid.

Justice to  
certify number  
of terms held.

Controller to  
issue warrant.

SEC. 6. This act shall take effect and be in force from and after its passage: *Provided*, this act shall only remain in force until the 1st day of January, A. D. 1883.

Approved February 4, 1881.

## ELECTIONS.

### AN ACT

BETTER TO SECURE THE PURITY OF ELECTIONS AND PROVIDE FOR CASES OF CONTESTED ELECTIONS.

*Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:*

SECTION 1. Any person who shall give, or promise, or offer to an elector of this Territory, or to any one claiming to be an elector thereof, any money, or valuable thing whatsoever, or reward or consideration of any kind or description, for, or whereby his vote at any election is, or may be influenced, or who shall give or promise to give to any other person any such consideration whereby the vote of any elector may be or is intended to be influenced, and any elector who shall receive for himself or for another, or agree to receive any money, reward, or valu-

Bribery of  
votes.

able thing as a consideration for his vote at any election or for withholding the same, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by fine, in any sum not less than twenty-five dollars, and not more than one hundred dollars, or shall be imprisoned in the county jail for a term of not exceeding six months, or by both such fine and imprisonment.

Voting without qualifications.

SEC. 2. If at any election held in this Territory, any person shall personate another and vote, or attempt to vote as, or in the name of such other, or shall vote or attempt to vote thereat without possessing the qualifications of an elector, or vote more than once at the same election, or do any unlawful act to secure an opportunity to vote himself, or for any other person to do so, he shall upon conviction thereof be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

Marking of ballots.

SEC. 3. If any officer of election shall prior to the time fixed for counting the ballots at the close of the polls, examine any folded ballot, or make any mark upon, or crease the same, so as to distinguish such ballot from others found in the box, shall be guilty of a misdemeanor, and upon conviction shall be punished as is provided in the last section.

False certificate of election.

SEC. 4. Any officer of election who shall alter or destroy, or abstract any ballot after the same has been deposited in the ballot box, or shall add or attempt to add any ballot to those legally polled, or substitute any others in place of those which have been polled, or read the contents of any ballot differently from that cast, or enunciate as on the ballot any name otherwise than as it truly appears thereon, or who shall make any false count, or any false certificate of election returns, or assist in making the same, or causes the same to be done, or assists or advises therein, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding one thousand (1,000) dollars, and by imprisonment in the penitentiary for a term not exceeding two years.

Riotous conduct at elections.

SEC. 5. Any person who shall willfully disturb, or shall be guilty of any riotous conduct at or near any election place or voting precinct with intent to disturb the same, or interfere with the access of the electors to the polling place, or in any manner with the free exercise of the elective franchise of the voters, or any voter

there assembled, or disturb or interfere with the canvassing of the votes, or with the making of the returns, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than twenty-five dollars, and not more than one hundred dollars, and by imprisonment in the county jail not exceeding six months.

SEC. 6. It shall be the duty of the Clerk of board of County Commissioners of the several counties to make a full and complete list of all persons challenged at any election, who shall have taken the oath prescribed in Section 16 of the act relating to elections; which list he shall present as soon as possible to the Prosecuting Attorney of his county. It shall be the duty of said attorney to examine carefully said list, and bring to the attention of the next Grand Jury, any and every case of the violation of the election laws, and fraudulent voting which he may have reason to believe has taken place. And any person found guilty of falsely swearing in his vote, shall be deemed guilty of perjury and shall be punished accordingly. List of challenged votes.

SEC. 7. No saloons shall be opened, nor shall any liquor be sold, nor given away by any person for the purpose of being used as a beverage on the day of any general election, before the final closing of the polls. Each sale or gift of liquor, during the prohibited time, shall be deemed a separate offense. Any person or persons violating the provisions of this section shall be deemed guilty of misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars, and not more than one hundred dollars for each offense. Saloons.

SEC. 8. Whenever any person intends to contest an election of any member of the Legislative Council, or House of Representatives of this Territory, he shall, within ten days after the result of such election shall have been determined by the Board of Canvassers, give notice in writing to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify the particular grounds upon which he relies in the contest. Contested election to legislature.  
Notice of contest.

SEC. 9. Any member upon whom the notice mentioned in the foregoing section may be served, shall within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer upon the contestant. Answer of notice.

**Testimony.**

SEC. 10. In all contested election cases the time allowed for taking testimony shall be (25) twenty-five days, and the testimony shall be taken in the following order:

The contestant shall take testimony during the first ten days; the returned member during the succeeding ten days; and the contestant may take testimony in rebuttal only during the remaining five days of said period.

**Depositions.**

SEC. 11. The party desiring to take a deposition under the provisions of this act, shall give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the names of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney authorized by him to attend the taking of testimony or cross-examining of witnesses in the matter of such contest, if by the use of reasonable diligence such service can be made; but if personal service cannot be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays, and the day of service. Testimony in rebuttal may be taken on three days notice.

SEC. 12. Testimony in contested election cases may be taken at two or more places at the same time.

**Subpoenas.**

SEC. 13. When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena, to either of the following officers; namely: Any District Judge of the Territory, the Probate Judge or any Justice of the Peace, Notary Public, Mayor, Recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

SEC. 14. The officer to whom the application authorized by the preceding section is made, shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their attendance before him, at some time and place named in the subpoena, in order to be examined respecting the contested election.

SEC. 15. It shall be competent for the parties, their agents or attorneys, authorized to act in the premises, by consent in writing, to take depositions without notice; also, by such written consent, to take depositions (whether upon or without notice) before any officer or officers

authorized to take depositions in civil actions. Any written consent, given as aforesaid, shall be returned with the depositions.

SEC. 16. Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use; and shall be guilty of a misdemeanor, and liable to punishment by fine and imprisonment, as provided in section two of this act. Refusal to testify.

SEC. 17. All witnesses who attend in obedience to a subpoena, or who attend voluntarily, at the time and place appointed, of whose examination notice has been given, as provided in this act, shall then and there be examined on oath by the officer who issued the subpoena, or, in case of his absence, by any other officer who is authorized to issue such subpoena, or by the officer before whom the depositions are to be taken by written consent, or before whom the depositions of witnesses residing outside of the county are to be taken, as the case may be. Examination.

SEC. 18. The officer shall cause the testimony of the witnesses to be reduced to writing, together with the questions proposed by the parties or their agents, in his presence, and in the presence of the parties, or their agents, if attending, and to be duly attested by the witnesses respectively.

SEC. 19. The officers shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person shall be liable to all the penalties prescribed in section two of this act. Production of papers.

SEC. 20. Every witness attending by virtue of any subpoena herein directed to be issued, shall be entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning; such allowance shall be ascertained and certified by the officer taking the examination, and shall be paid by the party at whose instance such witness was summoned. Per diem and mileage of witnesses.

SEC. 21. Each judge, officer of town or city, justice of the peace, notary public, or other officers who shall be necessarily employed pursuant to the provisions of this act; and all sheriffs, constables or other officers who may

**Fees of officers.** be employed to serve any subpoena or notice herein authorized, shall be entitled to receive from the party at whose instance the service shall have been performed, such fees as are allowed for similar services in the county wherein such service may be rendered.

SEC. 22. The taking of the testimony may, if so stated in the notice, be adjourned from day to day.

SEC. 23. All officers taking testimony to be used in a contested election case, shall, when the same is completed, certify and carefully seal and forward the same by mail, addressed to the clerk of the Supreme Court at Boise City, Idaho; and shall also endorse upon the envelope the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and shall subscribe such endorsement. The clerk of the Supreme Court shall immediately on the organization of the House at the session, if the house be not then organized, transmit the same unopened to that body to which the contest relates.

**Expenses of contested cases.** SEC. 24. No payment shall be made by the Legislative Assembly, or by either House thereof, to either party to a contested case, for expenses incurred in prosecuting or defending the same.

SEC. 25. This act shall take effect and be in force from and after its passage.

Approved February 7, 1881.

## MINES—LOCATION AND RECORDING.

### AN ACT

#### RELATING TO THE LOCATION AND RECORDING OF MINING CLAIMS.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

**Width of claim.** SECTION 1. The mining claims hereafter located upon veins or lodes of quartz or other rock in place bearing any of the precious or other metals, mentioned in section 2,320 of the Revised Statutes of the United States, may extend to three hundred (300) feet on each side of the middle of the vein or lode; *Provided*, that when



the locators have set the stakes, posts or monuments, described in the next section to indicate the line of the vein, ledge or lode, such stakes, posts or monuments shall be taken for the purposes of said location, to mark correctly the line thereof, and such line shall not be afterwards changed so as to affect the rights acquired or interfere with any locations made subsequently thereto.

SEC. 2. The locators of any mining claim shall at the time of making the location place a substantial stake or post, not less than four (4) inches square or in diameter, Location. at each end of the ground claimed, and as near as practicable along the course or line of the vein or ledge, and also a similar stake or post at each corner of the location. Such stakes or posts shall be at least four (4) feet high above the surface, and shall each be marked distinctly with the name of the claim. The notice of location hereinafter mentioned, shall be conspicuously attached to one of said center end posts, so that the same may be easily read; or it shall be conspicuously posted in like manner at the point of discovery and prospecting work on the claim. Where stakes or posts cannot be conveniently had, well built monuments of stone, of the like height above the surface will answer the purpose of stakes or posts, but the notice must be so placed on the side of such monument as to be readily seen. Notice, how placed.

SEC. 3. The notice shall contain the date of the location, the names of the locators, the name of the claim, ledge or lode, the quantity in feet claimed along the ledge or lode, the width claimed from the middle of the vein, and shall also give such a description of the locality of the claim, by reference to natural land-marks or fixed objects, and contiguous claims, if there be any, as to render the situation of the same reasonably certain from the letter of the notice itself. What to contain.

SEC. 4. Every claim shall be recorded within fifteen (15) days from the time of the posting of the notice, in the district in which the same is situated, or at the nearest office to the claim. For the convenience of prospectors and locators, the county Recorders of the several counties shall appoint a deputy at any place where he may deem it necessary, and at all places, more than ten (10) miles distant from an existing office, whenever ten or more mining locators interested shall petition for the appointment of such deputy. Upon the failure of any Recorder to make the appointment of a deputy for ten days after a petition in writing shall have been presented to him, the resident miners at such district may appoint tempo- When to be recorded. Deputy Recorders.

rarily one of their number to act as Recorder of the district whose records shall be as valid as if made by a deputy, and whose records shall be entered by the Recorder as hereinafter required; *Provided*, that whenever at any time afterwards the Recorder shall appoint a deputy for such district or place, the authority of the person elected by the resident miners shall cease.

Affidavit of locator.

SEC. 5. At the time of presenting a notice of location for record, or within five (5) days thereafter, one of the locators named in the same shall appear before the deputy, and make and subscribe an affidavit in writing, on or attached to the notice to be administered by said deputy, substantially in the following form, to wit:

Territory of Idaho, County of—, ss. I,—, do solemnly swear that I am acquainted with the mining ground described in the notice of location herewith, called the — ledge, lode or claim, and that the ground and claim therein described, or any part thereof, has not, to the best of my knowledge and belief, been heretofore located according to the laws of the United States and of this Territory, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply, in respect thereto, with the requirements of said laws.

Subscribed and sworn to before me, this—day of —, A. D. 18—.

A. B. —.

How recorded

SEC. 6. The notice herein required to be recorded is a copy of the notice placed upon the claim, or substantially a copy of the same. It shall be recorded by the deputy appointed for the district, or the person elected for that purpose, as above provided (when the legal fee therefor shall be tendered) in a book, to be kept for that purpose. Said book shall be indexed, with the names of all locators arranged in alphabetical order, according to the first letter of the family or surname of each. The fee to be tendered for making such record, administering the oath to the locator and certifying the same, for indexing the names appearing upon the notice, and to include the recording of the notice by the Recorder, as hereinafter required, and the indexing by said Recorder shall be three (\$3) dollars, which fee shall be equally divided between the Recorder and the deputy, or person acting under an election, as hereinabove provided; and no other or additional sum of money shall be demanded or received by either or any of them for any services

Fee.

connected with the recording of any notice of location made pursuant to the requirements of this act.

SEC. 7. The Deputy Recorder of mining claims of each district, or the person elected, as hereinabove provided, to make the record in case of the failure of the Recorder to appoint a deputy, shall at least once in each month, transmit to the Recorder, at the county seat, all the notices of location filed with him for record and not previously transmitted, which shall at once be recorded by said Recorder, in a book to be kept in his office, and be known as the book of mining claims. The names of all persons appearing in every notice of location shall be indexed by the Recorder, said names being arranged in said index in alphabetical order, according to the first letter of the surname of said locators.

Deputy to transmit notices to County Recorder.

Book of mining claims.

SEC. 8. The deputy Recorders provided for in this act shall not, by virtue of the provisions hereof, be authorized to perform any other than the special duties herein specified. They shall keep an official seal, and the records in their custody shall be public records, but the seal of a deputy Recorder shall not be attached to any paper except for the purpose of authenticating certificates attached to transcripts of the records in his custody as deputy Recorder.

Duties of Deputy.

Seal.

SEC. 9. Any person who shall willfully and maliciously tear or take down, or destroy any notice posted on any claim, or remove or take down any stake, post or monument, placed or erected for the purpose of marking or indicating any mining claim or the line of the vein, ledge, or lode, with the intent to destroy or impair the evidence of such location, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any Justice of the Peace of the county, may be punished by fine in any sum not exceeding one hundred (\$100) dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Destruction of notice.

Penalty for.

SEC. 10. An act relating to the discovery of gold and silver quartz lodes and the manner of their location, approved January 12, 1866; an act supplemental to and amendatory of said act, approved January 4, 1877; an act relating to the recording of quartz claims in Owyhee and Alturas Counties, and fixing the fees thereof, approved January 15, 1875; an act relating to the discovery of gold and silver quartz lodes in Lemhi County and the manner of their location, approved January 9, 1877; an act relating to the discovery of gold and silver quartz lodes in Lemhi County and the manner of their location,

Repeal of certain laws.

approved February 21, 1879, and all other acts and parts of acts in conflict or inconsistent with the provisions of this act, are hereby repealed.

SEC. 11. This act shall take effect and be in force from and after the passage thereof.

Approved February 10, 1881.

## DEVELOPMENTS OF MINES.

### AN ACT

TO AMEND AN ACT ENTITLED, "AN ACT CONCERNING RIGHTS-OF-WAY, EASEMENTS AND OTHER NECESSARY MEANS FOR THE DEVELOPMENT OF MINES," APPROVED JANUARY 12th, 1877.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section two of the act concerning rights-of-way, easements and other necessary means for the development of mines, approved January 12th, 1877, is amended to read as follows:

Rights-of-way  
and easements.

SEC. 2. Whenever any mine or mining claim, shall be so situated, that for the more convenient enjoyment of the same, a road, railroad or tramway therefrom, or a ditch or canal to convey water thereto, or a ditch, flume, cut or tunnel to drain or convey the water or tailings therefrom, or a tunnel or shaft may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, may require the use or occupancy of lands or mining ground, owned, occupied or possessed by others than the person or persons or body corporate, requiring an easement for any of the purposes described, then shall the owners of the mine or mining claim first above mentioned, be entitled to a right-of-way, entry and possession, for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft, or tunnel, in, upon, through and across such other lands or mining claims, upon compliance with the provisions of this act.

SEC. 2. This act shall take effect from and after its passage.

Approved January 7, 1881.

## WATER—RIGHT TO USE OF.

## AN ACT

3-367-370, 28x40

TO REGULATE THE RIGHT TO THE USE OF WATER FOR  
MINING, AGRICULTURAL, MANUFACTURING, AND  
OTHER PURPOSES.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The right to the use of water flowing in a river, creek, cañon, ravine, or other stream, may be acquired by appropriation, and as between appropriations priority in time shall, subject to the provisions of this act, secure the priority of right. How may be acquired.

SEC. 2. The appropriation must be in good faith, for some useful and beneficial purpose, and when once perfected, may be converted or changed to any other beneficial use than that originally designated, or for which it may have been employed. Appropriation must be in good faith.

SEC. 3. The appropriator, or his or their successors in interest, may change the place of diversion, if the rights acquired by others are not thereby interfered with, and no injury to others therefrom results, and may also extend any ditch, canal, flume, pipe, or other conduit, to points or places beyond such as may have been designated or first used, saving the rights which may have accrued prior to such extension. Appropriator may change place of diversion.

SEC. 4. A person, company, or corporation, desiring to appropriate water, must post a notice in writing in as conspicuous a place as possible, at the point of intended diversion, stating therein: First, the quantity of water which is intended to be claimed and diverted, giving the number of inches, measured under a four-inch pressure, and accurately describing the point of its diversion. Second, the purpose for which the same is claimed and intended to be used, and the point or place of such intended use. Third, the means which are designed to be employed for diverting and conducting such waters, and Notice of appropriation.

Record of  
notice.

Fees for  
recording.

Appropriator  
to commence  
work.

Continuance of  
work.

What is com-  
plete diversion.

Perfected ap-  
propriations.

Effect of.

Ditches, etc.,  
heretofore  
made.

3-370

the size or dimensions of the ditch, canal, pipe, flume, or other conduit therefor. A copy of the notice must, within the time allowed in case of a mining claim, be furnished for record to the officer of the county or district whose duty it may be to make record of mining claims; which said officer shall be entitled to the same fees for recording such notice as may be fixed by law for recording notice of a mining claim; *Provided*, that when the notice of such claim to water is accompanied by a descriptive survey of the proposed work, or by a map of the same, such officer shall be entitled to the same fees as shall be fixed by law for recording deeds of conveyance.

SEC. 5. Within sixty days after the notice is posted, the claimant or his or their successors in interest, must commence the making, digging, or constructing, of the ditch, canal, flume, or other conduit, by means of which it is intended to divert and conduct the waters claimed; and the work for the complete diversion and conducting of said waters shall be prosecuted diligently, and without unnecessary interruption; *Provided*, that when such work cannot be carried on by reason of unavoidable natural causes, such as the state of the weather or the action of the elements, the same shall be resumed as soon as practicable after such causes of delay are removed.

SEC. 6. By "complete diversion," as used in the last section, is meant the conducting of the waters claimed to the place of intended use, as described in the notice, or to such other place as may have been adopted, and an actual beneficial use thereof made.

SEC. 7. By a compliance with the above conditions and requirements, the appropriation is perfected, and the right to the use of the waters claimed, which the ditch, canal, flume, or other conduit is capable of conducting, is hereby declared to relate back to the time of the posting of notice of claim. *Provided*, that nothing in this section contained shall be so construed as to render any person, or party, liable to damages, or to make compensation to any appropriator for any waters used prior to the time of a "complete diversion" thereof, as defined in the last preceding section.

SEC. 8. All ditches, canals, and other works heretofore made, constructed or provided, and by means of which the waters of any stream have been diverted and applied to any beneficial use, shall be taken to have secured the right to the waters claimed, to the extent of

the quantity which said works are capable of conducting, and not exceeding the quantity claimed, without regard to, or compliance with, the requirements of this act.

SEC. 9. In case where any person, company, or corporation, have heretofore made claim to divert the waters of any stream, and the same has not been forfeited or abandoned, and have not cut, excavated, made or constructed the necessary ditch, canal, flume, or other conduit to carry such waters and apply the same to a beneficial use, such claimant must within four months from and after the date of the approval of this act, commence work in pursuance of the requirements hereof, and carry the same to completion, or at the expiration of the said time, or upon failure to prosecute the work in the manner herein required, such claim shall cease to be of any validity as the foundation of a right to the waters of any such stream.

Claim to diversion heretofore made.

SEC. 10. All persons, companies, and corporations, owning or claiming any lands situated on the banks or in the vicinity of any stream, shall be entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

Right of land owners.

SEC. 11. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, or other conduit on his own premises, for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants shall be entitled to a right-of-way through the lands of others, for the purposes of irrigation; *Provided*, that in the making, constructing, keeping up, and maintenance of such ditch, canal, or conduit through the lands of others, the person, company, or corporation proceeding under this section, and those succeeding to the interests of such person, company, or corporation, shall keep such ditch, canal, or other conduit in good repair, and shall also be liable to the owners or claimants of the lands crossed by such work or aqueduct, for all damages which may be occasioned by the overflow thereof, or result from any neglect or accident (unless the same be unavoidable), to such ditch or aqueduct.

Land owners entitled to right-of-way.

To keep conduit in good repair.

Liable for damages.

SEC. 12. In case of the refusal of the owners or claimants of any lands through which such ditch, canal, or other works are proposed to be made or constructed, to allow the passage thereof, the persons, company or cor-

When right-of-way is refused, to petition the county commissioners.



poration desiring the right-of-way, may present to the County Commissioners of the county, a petition describing the lands to be crossed, the size of the ditch, canal, or works, the quantity of land required to be taken, and setting forth the names of the owners or parties interested in the lands to be crossed, and praying for the appointment of three appraisers to ascertain the compensation to be made to such owners or parties interested.

Commissioners  
to give notice  
of hearing pe-  
tition and ap-  
pointing of ap-  
praisers.

Upon the filing of said petition, the County Commissioners shall give notice, by publication in a newspaper, if there be any printed in the county, or if there be none, by posting such notice in three of the most public places in the county, one of which shall be at the county seat, that at a time and place specified in said notice, said petition will be heard, and such appraisers appointed, unless good cause be shown by the parties adversely interested, why the said petition should be denied. Said notice shall be published or posted for not less than thirty days prior to the hearing thereon, and the expenses of the publication or posting of the same shall be defrayed by the petitioners.

Oath of ap-  
praisers.

Sec. 13. The said appraisers shall, before entering on the duties of their office, take an oath to faithfully and impartially perform the duties as such appraisers, and make a true and just award of the amount of the compensation to be paid for the right-of-way over and use of the lands to be crossed by such ditch, canal or other conduit. They shall hear the allegations and proofs offered by the respective parties, and after viewing the lands and premises, shall ascertain and certify the compensation which in their judgment it is just and proper to make to the parties owning or interested in the lands to be crossed for the use of the same, and for damages, if any, on account of injury to other portions of the tract of land of any owner or interested party, after making allowance and deduction for real and direct benefits which such owner, or party interested will derive from the making of such ditch, canal or other works. The appraisers, or a majority of them, shall subscribe such certificate, and the same shall be recorded in the office of the County Recorder, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or in the absence of such parties from the county, then, upon deposit of the amount in the County Treasury to the credit of the said party, the persons, company, or corporations, petitioners shall have the right of entry upon and of way for the proposed ditch, canal or other works.

Appraisers to  
hear proofs  
and make cer-  
tificate.

Subscription  
and recording  
of certificate.

SEC. 14. All persons, companies and corporations, owning or having the possessory title or right to lands adjacent to any stream, shall have the right to place in the channel of, or upon banks or margin of the same, dams or other machines for the purpose of raising the waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right-of-way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the last two sections.

SEC. 15. Where the owners of any spring, or the appropriators thereof, or of any stream, may desire to conduct the waters thereof to any lands for purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object, it may be necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right-of-way over and across the lands of others for conducting said water may be acquired in the manner prescribed in Sections 12 and 13 of this act.

SEC. 16. The owners or constructors of ditches, canals, works, or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, shall carefully keep and maintain the same, and the embankments, flumes, or other conduit, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

SEC. 17. Nothing in this act contained shall be so construed as to interfere with or impair the rights to water appropriated and acquired prior to the passage of this act; but this reservation in behalf of existing rights shall not exempt such appropriators from liability as provided in the last section.

SEC. 18. In case the volume of water in any stream shall not be sufficient to supply continually the wants for irrigating purposes of the owners or proprietors of land in any district or neighborhood, in which customs exist, for distributing the waters amongst such owners or proprietors, under the direction or supervision of persons recognized by the community interested to have au-

Right-of-way.

Ditches, etc., to be kept in good repair.

Act not to interfere with prior rights.

Insufficiency of supply of water.

thority therein, the waters diverted shall, in such case, be held to be a common right in those accustomed to a participation in the use and enjoyment of such distribution, and such customs shall be upheld in all courts as conferring such common right in the same; *Provided*, this section shall not be construed to affect any prior vested rights.

Order of right  
to use of water.

SEC. 19. In case any person, company, or corporation, shall have constructed a ditch for the purpose of directing the water of any river, creek, cañon, ravine, or spring, for the purpose of selling the water thereof for irrigating purposes, the owners or cultivators of land along the line of and covered by said ditch or canal, shall be entitled to, and have the right to the use of water from said ditch or canal for the purpose of irrigating said land so owned or cultivated, in the following order: First, all persons through whose land said ditch or canal runs, shall be entitled to the use of the water thereof in the order of their location along the line of said ditch or canal. Second,—after those through whose land the ditch or canal runs,—those upon either side of the line of the ditch or canal shall be entitled to the use of the water thereof; those equally distant from the line of said ditch or canal, shall be entitled to priority in the order of their location along the line of said ditch or canal; *Provided, always*, that the owners or cultivators of such lands shall pay the usual and customary rates for the use of said water. And whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it shall be unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal, so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal. And it is hereby made the duty of the owner or owners of any such ditch or canal, to keep the same in good repair, and to cause the water to flow through said ditch or canal to the extent of its capacity, provided so much may be needed, during the entire time that water may be necessary for irrigating purposes; and *provided, further*, that the river, creek, cañon, ravine, or spring from which the water is taken, furnishes an amount of water sufficient for such purpose, subject to the appropriation of the owner or owners of such ditch or canal. For a failure to cause the water to flow as aforesaid, the owner or owners, or lessees of any

Repair of  
ditches.

Supply of  
water.

such ditch, shall be personally liable, to any one for any damage resulting from such failure, and in addition to such personal liability, such damages shall be a lien upon such ditch or canal, which lien shall continue in force until such damages are paid.

No person entitled to the use of water from any such ditch or canal, shall, under any circumstances, use more water than good husbandry shall require for the crop or crops that he shall cultivate;—and any person using an excess of water, shall be liable to the owner or owners of such ditch or canal, for the value of such excess; and in addition thereto, shall be liable to all damages sustained by any other person, who would have been entitled to the use of such excess of water, as fixed by this section. Use of excess of water.

Sec. 20. This act shall take effect and be in force from and after its passage.

Approved February 10th, 1881.

## WATER FOR IRRIGATION.

### AN ACT

#### REGULATING THE DISTRIBUTION OF WATER FOR PURPOSES OF IRRIGATION.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Any vicinity or neighborhood the inhabitants of which use the waters of any ditch, stream, or spring, for the purpose of irrigation, or have, or claim a common right to the waters of any ditch, stream, or spring for such purposes, shall constitute a water district, Water districts. and a majority of such inhabitants having such common right may annually, on the fourth Monday of March, at a meeting of such inhabitants, elect a water Water master. master for their district, whose duties it shall be to superintend the distribution of such waters among those having such common right, or accustomed to participate in such common use. The water master of the district, or if there be no water master, or upon his failure or neglect so to do, any six residents of the district entitled to such common right, shall give three day's public

Election of  
water master.

Bond of water  
master.

Compensation.

Duties of water  
master.

notice of the time and place of such election, by posting written or printed notices thereof in three of the most public places in the water district. Said meeting shall be opened at ten o'clock in the forenoon, and the majority of those present who are entitled to such common right, may organize the same and determine the manner of such election, and whether the same shall be by ballot or otherwise. The water master shall execute to the county in which his district is situate, and file in the office of the county Recorder, for the benefit of any person who may be injured by his wanton or illegal act, or omission, as such, a bond in the sum of five hundred dollars, with two sufficient sureties, and conditioned for the faithful and impartial discharge of his duties as water master of his district; and any person so injured shall have an action on such bond in his own name for his actual damages. A water master may employ one or more deputies, as authorized by the inhabitants of his district claiming such common right, as aforesaid; and he shall be liable for their wanton and illegal acts upon his official bond; and, before entering upon their duties, the water master and his deputies, shall take and subscribe an oath, before any magistrate, faithfully and impartially to discharge the duties of their office; and they shall receive such compensation, to be paid in such manner as may be agreed upon with such inhabitants.

SEC. 2. The owner or owners of any ditch for the distribution and sale of water, for the purposes of irrigation, shall employ a water master for the distribution of the water of the ditch to the persons purchasing the same for such purposes; and no account or demand for the use of such water during any time such water master is not so employed, shall be valid or collectable.

SEC. 3. The water master and his deputies shall regulate the distribution of water among the several ditches of his district, and among the several inhabitants who are entitled and accustomed to the use thereof, according to their respective rights and necessities; and when the quantity of water is not sufficient to afford a full supply to those entitled or accustomed to use the same, according to the usage of the district, the water master and his deputies shall regulate the quantity to be used by each person, and the time at, and during which, each person may use the same; *Provided*, nothing in this act shall be so construed as to interfere with the vested rights of individual companies or corpora-

tions, or in any manner to interfere with the rights of individuals, companies, or corporations, to the use and control of water which is or may be their private property.

SEC. 4. Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefor, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the water master of the district may make a fair *pro rata* assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed shall neglect or refuse for the period of ten days, after notice so to do from the water master or his deputy, to furnish his just proportion of the necessary labor or materials, according to such assessment, he shall forfeit all right to the use of water from such ditch for the year in which he shall make such default. Repair of  
ditches.

SEC. 5. The water master shall see that there are provided the necessary and proper head-gates and dams; and that the water is turned and runs into the ditches of his district at the proper season of the year; and he may require all persons receiving water to construct proper gates at the points at which they take water from any ditch, dam or reservoir; and he shall have such control of the location of ditches and gates as may be necessary to secure the most equitable distribution of the water among all entitled to its use. Head-gates and  
dams.

SEC. 6. Any person who shall, without the consent of the water master of the district, divert any water from the ditch or channel where it was placed or caused or left to run by the water master or his deputies, or who shall shut or open any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use, or who shall, without the consent of the water master, cut any ditch or the banks thereof, or break or destroy any gate or flume, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five nor more than twenty dollars, and shall be liable in a civil action to any person injured thereby in three times the actual damage sustained in consequence of any such wrongful act or acts.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved February 7, 1881.

## OPIUM—SMOKING OF.

## AN ACT

TO PROHIBIT THE KEEPING OF PLACES OF RESORT FOR  
SMOKING OPIUM OR FREQUENTING THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Places of  
resort.

Sale of opium.

Destruction of  
opium.

SECTION 1. Any person or persons who shall set up, open, caused to be opened, or keep any house or place as a resort for the purpose of smoking opium, or any preparation containing opium, or who shall barter, sell, vend or give away opium, or any preparation containing opium, for the purpose of being smoked, or that is smoked upon the premises, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine in any sum not exceeding one hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment; and in case any such fine and the costs of prosecution are not paid, any person or persons convicted under this section and sentenced to pay a fine, may be held by the sheriff and compelled to work at hard labor in a chain-gang or otherwise, in charge of a keeper, upon the public highway or elsewhere, or for any person who may contract with the sheriff for such labor, until such fine and costs are fully paid, at the rate of one dollar per day for each day of ten hours hard labor; and any money so received shall be applied to the payment of the fine and costs. And upon any conviction under this section, the court before which such conviction is had may direct the sheriff or arresting officer to destroy any opium, or preparation containing opium, and all pipes, utensils, implements, and other things used, had or kept for use, or designed or adopted for use in smoking opium, or any such preparation that may have been used in evidence on the trial of any person convicted under this act, or that may be found upon his person or premises, and the court may order such premises searched for the same.



SEC. 2. Any person or persons who shall bargain for, <sup>Purchase of opium.</sup> buy, take or accept any opium, or preparation containing opium, in any house or place to be smoked upon the premises, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

SEC. 3. That any person or persons who shall smoke <sup>Smoking of opium.</sup> opium or any preparation containing opium in any house or place not occupied by them as a residence, or who shall be found in any house or place kept or used as a resort or place for the purpose of smoking opium or any preparation containing opium, without any lawful business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 22, 1881.

## ROADS, HIGHWAYS AND PUBLIC THOROUGHFARES.

### AN ACT

REGULATING ROADS, HIGHWAYS AND PUBLIC THOROUGHFARES, IN IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. All public highways, roads, streets, and thoroughfares, which are or have been used as such at any time within two years prior to the passage of an act entitled, "An Act concerning roads, trails, and public <sup>County roads, 7</sup> thoroughfares," approved January 12th, 1875, or which may hereafter be declared such by the board of County Commissioners within their respective counties, shall be considered county roads. All roads or highways laid out or now traveled, or which have been commonly used by the public, including such as have been wrongfully closed at any time since January 12, 1873, in the several coun-

ties of this Territory, are hereby declared county roads; excepting, however, roads and highways upon which franchises have heretofore been granted, so long as the franchise of any such road shall remain in full force and effect.

Petition for  
location, alter-  
ing, etc.

SEC. 2. All applications for laying out, altering or locating county roads, shall be by petition to the board of County Commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

Notice of  
application.

SEC. 3. When any petition shall be presented for the action of the County Commissioners for laying out, alteration or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted at the usual place of holding the sessions of the board of County Commissioners, and also in three public places in the vicinity of said road or proposed road, thirty days previous to the presentation of said petition to the County Commissioners, notifying all persons concerned that application will be made to the said County Commissioners at their next regular session after the expiration of said notice, for laying out, altering or vacating such road, as the case may be.

Viewers of  
roads.

SEC. 4. Upon the presentation of such petition, and proof that notice has been given, as provided in the last section, the County Commissioners may appoint three disinterested householders of the county as viewers of said road, and shall issue an order directing said viewers, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, lay out or alter said road.

Duty of  
viewers.

SEC. 5. That it shall be the duty of the viewers appointed as aforesaid, after receiving at least five days previous notice by the clerk of the board of County Commissioners, to meet at the time and place specified in the order of the County Commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointment, shall proceed to view, and lay out or alter said road, as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense which will result to individuals as well as to the public, if such road

shall be established and opened or altered; and shall cause the same to be conspicuously marked throughout. All trees on the line of such road shall be marked on each of the sides corresponding with direction of road; and when there are no trees along the line of said road, the same shall be marked out by posts at least four inches in diameter, and four feet long, planted not less than eighteen inches in the ground, and not more than one half mile apart along the whole line of said road, and the viewers, or a majority of them, shall make and sign a report in writing, stating their opinion in favor of, or against the establishment of, or alteration of such road, and set forth the reasons for the same; which report shall be delivered to the clerk of the board of Commissioners by one of the viewers, on or before the first day of the session of the board of County Commissioners then next ensuing. And it shall be the duty of the County Commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no remonstrance with a greater number of remonstrants than there are names on the petition (the remonstrants to be confined to the vicinity of the proposed road) or petitions for damages be filed, and the Commissioners being satisfied that such road will be of public utility, the report of the viewers being favorable thereto, the Commissioners shall cause said report to be recorded, and from thenceforth said road shall be considered a county road or public highway, and the Commissioners shall issue an order directing said road to be opened.

Marking of roads.

Report of viewers.

Opening of roads.

SEC. 6. That in all cases where any oath or affirmation is required to be taken under the provisions of this act, the same may be administered by any justice of the peace, or by one of the viewers who has previously been sworn or affirmed.

Oaths.

SEC. 7. Any person through whose lands any county road may be viewed and marked out, who may deem himself injured by the opening of the same, may make complaint thereof in writing, to the County Commissioners at the time the report of the viewers appointed to view said road is considered, and if such complaint be made, the County Commissioners shall appoint three disinterested persons, who are householders of the county, who shall meet at such time as may be designated by the County Commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed, to discharge their duty faithfully

Grievances.

Assessment of  
damages.

and impartially, shall proceed and view said proposed road, the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the County Commissioners at their next regular term.

Payment of  
damages.

SEC. 8. If the County Commissioners are satisfied that the amount of damages so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the County Commissioners shall order the same to be paid to the complainant out of the county treasury; but if in the opinion of the County Commissioners such proposed road is not of sufficient importance to the public to cause such damages to be paid by the county, the Commissioners may refuse to establish the same as a public highway; unless the expense or damages or such part thereof as the Commissioners may think proper shall be paid by the petitioners.

Appeals.

SEC. 9. Any complainant who may feel himself aggrieved by the assessment of damages, as prescribed by the last two sections, may within twenty days after such report is adopted by the County Commissioners, appeal therefrom to the District Court of the proper county; such appeal shall be taken in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he shall pay all costs of the appeal.

Width of roads.

SEC. 10. No county road shall be less than sixty feet in width; *Provided*, that in Idaho County the width of all roads shall be eighty feet.

Change of  
roads.

SEC. 11. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may, by petition, apply to the County Commissioners of the proper county to permit him or them to turn such road through any other part of his or their land, without materially increasing the distance to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expense to be incurred thereby, the Commissioners may appoint three disinterested householders as viewers, who, or a majority of them, shall proceed to view the ground over which the road is proposed to be turned, and ascertain the dis-

tance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations; and if the viewers, or a majority of them, shall report to the Commissioners that the prayer of the petition is reasonable, the Commissioners, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new; and the person or persons petitioning for the alteration shall pay all the costs and expense of the view and return of such alteration.

View of road proposed to be changed.

Opening of new and vacation of old road.

Costs of alteration.

SEC. 12. If any viewer shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined by the County Commissioners in any sum not exceeding twenty-five dollars, to be recovered by an action before a justice of the peace of the proper county, which fine, when collected, shall be paid over without delay into the county treasury.

Fine for neglect of duty by viewers.

SEC. 13. Upon application being made under the provisions of this act for a view of any public road proposed to be laid out, altered, or vacated, the Commissioners shall, before issuing an order to the viewers, require a bond to be executed by one or more of the petitioners for such view, with surety sufficient, to be approved by the Commissioners and made payable to the county in such sums as the Commissioners shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted and allowed, the person executing such bonds will pay all costs and expenses that may be incurred by reason of such view.

Bond of petitioner for public road.

SEC. 14. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing to the county Commissioners of his county, at a regular session, for a road leading from his premises to some convenient public road, and thereupon the Commissioners shall appoint three disinterested householders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order, to view and locate a road according to the application, and to assess the damages to be sustained thereby, and after being duly sworn or affirmed, faithfully and impartially to discharge the

Petition for road from land having no connection with any public road.

Appointment of viewers.

**Assessment of damages.** duties of their appointment, and after at least three days notice, given to all persons through whose lands such road is to be located; such viewers shall proceed to locate and mark out a road thirty feet in width from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least damage to the lands through which such road is located; and they shall also at the same time, assess the damage sustained by the person or persons owning such lands.

**Gates on roads.** SEC. 15. The viewers appointed in accordance with provisions of the preceding section of this act, shall have power to determine in all cases, whether or not gates shall be placed at proper points on said road, and assess damages in accordance with that determination.

**Report of viewers.** SEC. 16. The viewers so appointed, or a majority of them, shall make a report to the County Commissioners at their next regular session, of the road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages, and if the County Commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road, and the damages assessed by the viewers, the Commissioners shall order such report to be confirmed, and declare such road shall be opened, and the same shall be recorded, and any person aggrieved by the assessment of damages may appeal within twenty days after such confirmation of the report to the District Court.

**Opening of road.** SEC. 17. The several boards of County Commissioners shall as often as they deem necessary (but not oftener than once a year), divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

**Road districts.** SEC. 18. The board of County Commissioners shall annually, at the April term thereof, appoint a supervisor of roads for each road district in the county, and shall at any time fill any vacancy that may occur in such

**Supervisor of roads.** office. They shall cause a certified copy of the order appointing a supervisor to be delivered to the sheriff or his deputy, who shall serve the same within ten days, which shall be notice of his appointment, and evidence

**Notice of appointment.** of his authority to act as such. Each supervisor shall hold his office until the following April term of the board of County Commissioners, or until his successor is appointed and qualified; and before entering upon the discharge of his duties shall take an oath to faithfully

**Term of office.**



discharge the duties of his office, and if required by the Commissioners, shall enter into an undertaking to the county, with one or more sureties, to be approved by the Commissioners, in any sum specified by them, not exceeding five hundred dollars, to the effect that he will discharge all of the duties of supervisor under this act, and faithfully account for and pay over to his successor, all moneys that may be in his hands by virtue of his office. The County Commissioners shall have power at any time to remove from office any supervisor who shall fail, neglect or refuse to perform the duties of his office.

Board of Supervisor.

Removal from office.

SEC. 19. It shall be the duty of the clerk of the board of County Commissioners to furnish the supervisor of each road district a list of petitioners for county roads residing in his district, and it shall be the duty of the supervisors to cause said petitioners to perform two days' labor each in opening said road; *Provided*, that any person may, in lieu of each day's work to be performed according to this section, pay into the hands of the supervisor the sum of two dollars per day, to be expended in labor on said road, in said road district.

Petitioners for roads, list of.

Road labor of a petitioner.

SEC. 20. It shall be the duty of every supervisor of roads, on or before the twentieth day of April in each year, to obtain the names, and make out in alphabetical order, a list of all persons liable to perform labor on the public roads residing within his road district, and file the same with the clerk of the board of County Commissioners, whose duty it shall be to affix to each name the amount of taxable property owned by each person residing or owning real property therein, as assessed for county rates the last preceding year.

Persons liable to road labor, list of.

SEC. 21. The supervisor shall apportion the labor to be performed in his road district according to the valuation of all property taxable therein, according to the provisions of the next section, owned by each person residing or owning real property therein, in the ratio of one days work for each and every one thousand dollars assessed for Territorial and county purposes, the last preceding year. The supervisor shall also assess two days work, to be performed by every male between twenty-one and fifty years of age, except persons who are a public charge, or too infirm to perform labor; *Provided*, that any person may in lieu of each day's work to be performed by him, according to this act, pay into the hands of the supervisor the sum of two dollars, to be expended for labor on or material for the county roads in the dis-

Appointment of road labor.

Substitute for road labor.



Listing of prop-  
erty to owner  
at time of ap-  
portionment.

Listing of  
property of  
companies,  
etc.

Listing of  
property  
omitted.

District in  
which property  
shall be as-  
sessed.

Notice to la-  
bor on roads.

tract, where said property so taxed is located; *And provided, further*, that where such property has been conveyed since the assessment for Territorial and county purposes, the supervisor shall, upon the basis of such assessment, list such property to the owner at the time of his apportionment, and such owner shall be liable therefor at the rate aforesaid, the same as though it had been assessed to him on the county assessment roll; *Provided, further*, that the supervisor of any road district shall list and assess in the name of any partnership company, corporation, or association, in the same manner as in the case of an individual, or in the name of one of the persons composing the same, all property, both real and personal, belonging thereto, and for any violation of any of the provisions of this act, each and every one of the persons interested in said partnership, company, corporation or association, shall be held liable therefor.

SEC. 22. Whenever the supervisor shall, from any cause, have neglected or omitted to place on his list and assess any person or property within the time required by law, he shall at any time afterwards, within his year of office, place any such property or the name of any such person on the list; and assess the number of days work to be performed by him or for such property, which assessment shall in all respects be valid, as if made in due time. All real estate and fixed property shall be listed and assessed for road purposes in the road district where it is situated, and all live stock in the road district where it is wintered, and all other personal property in the road district where the owner resides, if he resides in any road district in the county where the property was last assessed for Territorial and county purposes; otherwise in any road district where such property may be found; *Provided*, that no property shall be subject to assessment in more than one road district for the same year.

SEC. 23. The supervisor must notify every person within his road district subject to road labor as aforesaid, to perform the work assessed against him and his property on the public roads within his district, and if any person subject to road labor as aforesaid, shall, after three days notice, either personally or by writing, left at his usual place of abode by the supervisor or by any person by his direction, neglect or refuse to attend by himself or suitable substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey any reasonable direction of the supervisor, or shall pass his time in idleness, or inattention to the labor or

duties assigned him, any such delinquent shall thereby become liable to the supervisor for the amount of his road tax in money, and such supervisor shall proceed at once to collect the same by levy and sale of the property real and personal of such delinquent, or sufficient thereof for that purpose, and to pay the penalty for such delinquency, and the costs and expense of the levy and sale.

Collection of  
road tax.

SEC. 24. In any such case the supervisor must collect of the delinquent, in addition to the amount of the road tax, twenty per centum thereon; but if any such delinquent shall pay the amount of the road tax to the supervisor before a levy upon his property, only ten per centum shall be added thereto.

Addition to  
road tax of a  
delinquent.

SEC. 25. Every person notified to labor on the county roads under the provisions of this act, shall be required to appear at the place appointed by the supervisor at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently during at least eight hours each day, at such work and in such manner as shall be directed by the supervisor. Any person liable to labor on any county road, and who has not discharged or paid the same, being the owner of a team of horses, mules or oxen, or plow, wagon, cart or scraper, may be required by the supervisor to furnish the same, on such reasonable terms as said supervisor may think just, and he may allow such person to discharge his liability to labor, in whole or in part, by the use thereof.

Number of  
hours labor  
required.

Payment of  
tax by use of  
horses, mules,  
etc.

SEC. 26. When a supervisor cannot find sufficient property of a delinquent, out of which to make the amount of his road tax, he must collect the same or any part thereof remaining uncollected, by an action in his own name against the delinquent in any court having jurisdiction thereof; and if judgment be given in such action against the defendant, it shall be enforced in the same manner as a judgment for a fine in a criminal action.

Action for  
road tax.

The moneys paid to or collected by the supervisor for road taxes shall be expended by him in the improvement or the repair of the roads in his district, as may be most needed or useful.

Disposal of  
moneys col-  
lected.

SEC. 27. The supervisor of roads shall open or cause to be opened, all public roads which may have been or may hereafter be laid out and established according to law, in any part of his road district.

Opening of  
roads by Su-  
pervisor.

If the assessment as provided in section 21 of this act, is not sufficient for that purpose, then he shall have au-

Purchase of tools.	thority to assess and call out such an amount of labor as will be sufficient to open such public roads in his district; <i>Provided</i> , that said assessment shall be made as near as possible upon the basis of assessment in section 21, and he shall have authority to purchase with any money which may come into his hands as supervisor for the use of the road district, any plows, scrapers, or other implements which he may think proper, and to enter
Entry on lands.	upon any lands adjoining or near the public road, and gather, dig and carry away any stone, gravel, sand or earth for making and repairing any public road, and to purchase and pay for any timber plank or other material necessary for making or repairing any public road in his district, and to enter upon any land adjoining or laying near any public road in his road district, and cut
Purchase of timber, etc.	open or construct such drains and ditches as he shall deem necessary for the making or preservation of such roads, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars for each offense, to be recovered and appropriated as provided in the last section; <i>Provided</i> , that in all suits decided adversely to the supervisor, hereby authorized to be instituted by him, he shall be allowed a credit in his yearly settlement of costs he may have been compelled to pay on account of such adverse decision or decisions.
Construction of drains.	
Obstruction of drains.	
Credits to supervisor of adverse costs of suit.	
Complaint against Supervisor for entry on land.	SEC. 28. If any person shall feel aggrieved by the act of any supervisor carrying away any stone, gravel, earth or other material, he may make complaint thereof in writing to the County Commissioners, at any regular meeting within six months after the cause of such complaint shall arise, and such Commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant, and cause the same to be paid out of the county treasury.
Assessment and payment of damages	
Finger-boards.	SEC. 29. Every supervisor shall erect and put up at the forks of every highway and every crossing of county roads within his road district, a guide or finger-board, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road respectively. Any person who shall destroy, deface or remove any such guide or finger-board, shall be deemed guilty of a misdemeanor; and upon conviction may be punished by fine in any sum not exceeding fifty (50) dollars, or imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.
Fine for removal, etc.	

SEC. 30. If at any time any county road shall become obstructed by falling of timber or from any other cause, or any public bridge on such road shall be impaired or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed, or bridges repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he shall deem necessary to remove such obstruction or repair such bridge, and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties as if ordered out under section 23 of this act.

Labor for removing any obstruction.

SEC. 31. In all cases when any person shall, under the direction of the supervisor of roads, perform more labor upon the county roads than may have been assessed upon him under the provisions of this act, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such road district, in any subsequent year for the amount of labor specified therein.

Certificates for extra labor.

SEC. 32. Every supervisor shall keep an account of the days work performed on the roads in payment of road tax, and by whom performed; and also an account of all moneys collected or recovered by him for road tax, and of the expenditures of the same, or any part thereof; and such supervisor shall each year return his accounts to the County Commissioners for examination and settlement at the April term thereof; when he shall be charged with any unexpended balance in his hands as receipts of the coming year; but the supervisor shall have the custody of all moneys collected or received by him during his time in office, and must pay over any balance in his hands to his successor.

Account of labor done and money collected.

SEC. 33. In an action by the supervisor to recover a delinquent tax, the presumption shall be, until the contrary is shown, that the defendant was duly warned to work the road, and failed or neglected so to do, and that he had no property whereon the supervisor could levy to make the amount of such tax or the portion sued for. No property is exempt from levy and sale for a delinquent road tax.

Presumption of notice.

No property exempt.

Neglect of duty  
by Supervisor.

Receipt for  
money not paid  
or labor not  
performed.

Penalty for  
false receipt.

Compensation  
of Supervisor.

Compensation  
of viewer.

Compensation  
in certain  
counties.

Obstruction  
and damage  
of any road.

SEC. 34. Any supervisor of roads who shall neglect, or refuse to perform the several duties enjoined upon him by this act, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed unless the money shall have been paid or the labor performed prior to the giving or signing such receipt or certificate, or who shall give any such receipt or certificate on any blank or paper other than the blanks hereinafter directed to be furnished by the county auditor, or for any greater amount than the money paid or labor performed, shall forfeit for every such offense not less than five nor more than fifty dollars, for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the board of County Commissioners; and it is hereby made the duty of the County Commissioners to sue for the same.

SEC. 35. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this act, over and above the number of days' work required by law to be performed by such supervisor, the sum of three dollars and fifty cents, to be paid out of the county treasury when the report of the supervisor shall have been received and approved by the County Commissioners. Every person employed as viewer under this act shall receive as compensation the sum of two dollars and fifty cents per day; *Provided*, that no supervisor or viewer shall receive any compensation until he shall certify to the County Commissioners under his oath that he has been necessarily employed the number of days for which he claims pay; and that he has complied with the requirements of this act; *Provided*, that in the counties of Alturas, Custer, and Lemhi, the supervisor shall be entitled to receive four dollars per day; and *provided, further*, that in the counties of Washington, Bear Lake, and Oneida, the road supervisor shall receive \$2.50 per day.

SEC. 36. If any person shall obstruct any public road, trail, street or thoroughfare, by felling trees across the same, or by placing any other obstructions therein, or damaging, digging, or deepening a creek or river, or its banks, so as to destroy a ford or crossing, or fence up or obstruct any such highways, and who shall neglect for five days after having been notified by the supervisor to remove any such obstruction, shall be deemed guilty of a misdemeanor, and upon conviction before any court having

jurisdiction, shall be fined in a sum not exceeding one hundred dollars, and be adjudged to pay all costs of prosecution.

Sec. 37. If any person shall willfully destroy or injure any bridge or causeway, or remove or cause to be removed any of the plank or timber therefrom, or cut down or injure any tree planted or growing as a shade tree in any public highway, street, or thoroughfare, or injure any such public highway, street, or thoroughfare, by digging therein, he shall be liable to be prosecuted before any justice of the peace, on complaint of any resident of the road district, and on conviction thereof shall be fined in a sum not to exceed one hundred dollars.

Injure of any bridge or tree on any public road.

Sec. 38. Any person or persons, body politic or corporate, who shall obstruct, injure, or damage any public road, street, or highway, either by placing obstruction therein, or by digging in, deepening or deviating the water of any stream, or by placing any obstruction in any ditch or stream within or along any public road, street, or highway, or by placing or constructing any obstruction, ditch, or embankments, upon their own or other lands, so as to make or cause any water to flow upon or impair any public road, street, or highway, or shall ride or drive upon and along the sidewalk or sidewalks of any road, street, or highway, whenever such sidewalks have been graded or graveled, located or designated by any order of the board of County Commissioners or city council, or prepared in any other manner dedicating and designating the same for and to that particular use and purpose, either by the property owner or by the public, or in any other manner injure or obstruct any public road, street, or highway, shall be deemed guilty of a misdemeanor, and shall be liable to prosecution before any justice of the peace in said county; and upon conviction of the violation of any of the provisions of this section, shall be punished by a fine of not less than ten nor more than fifty dollars, to be collected as other fines are collected; and any such person, body politic or corporate, shall be further liable, at the suit of the road supervisor of the district, in the sum of five dollars for each and every day such obstruction is allowed to remain after being notified to remove or remedy the same by the road supervisor of the district.

Injury of any road, sidewalk, etc., by any company.

Punishment by fine.

It shall be the duty of the road supervisor of any district wherein such obstruction, injury or damage exists, to make a complaint against the person or persons, body politic or corporate, so obstructing or injuring

Complaint by Supervisor against any company obstructing any road.



any public road, street, or highway, in his district, before any justice of the peace of the county.

Vacation of  
road not  
opened.

SEC. 39. If any part of any road in this Territory shall not be opened for four years after its location, the same shall become vacated.

Blank receipts  
for road tax.

SEC. 40. The auditors of the several counties, shall furnish each road supervisor blank receipts for said road tax, and with blank certificates for extra labor performed as provided in section 31 of this act.

Construction  
of ditches for  
carrying water  
across any  
public road.

SEC. 41. Any person or persons, company or corporation, desiring and intending to run water across any public road, street, or highway, in this territory, shall first construct a ditch or ditches of sufficient size to carry all of such water, and shall build a good substantial bridge, with good easy grades leading on and off of the same, over such ditch or ditches, not less than twenty feet wide, of good hewn or sawed timber or lumber not less than three inches thick, laid on good substantial timbers not less than six inches square; and they and their successors shall keep all such bridges and ditches in good repair, so long as such ditches are maintained. All persons now having ditches across any public road, street or highway in this Territory, shall within one hundred and twenty days after the passage of this act, construct good and substantial bridges, as above described, over the same, and keep the same in repair in all respects as above specified; *Provided*, that where the quantity of water of any ditch is such that a box or culvert will carry the same, said water may be conducted across any road, street or highway by means of such box or culvert, which shall be adapted to the surface of the road, street or highway, and be built of a length of not less than twenty feet, and in a manner so substantial as to bear and admit of uninterrupted travel.

Construction  
of bridges  
across ditches  
now used.

Construction of  
ditches and  
bridges or  
culverts by  
supervisor of  
roads.

SEC. 42. If any person or persons, company, or corporation, owning or having ditches, or who shall hereafter construct ditches across any public road, street, or highway, shall fail or neglect to build bridges or culverts over the same, as required by the last section, or to keep the same or their ditches, on any public road, street or highway, in good repair, it shall be the duty of the supervisor of the district to build or repair the same at the expense of such person or persons, company, or corporation, and the cost thereof shall be a lien upon the land and premises of such ditch owner or owners, and may be sued for and collected, by and in the name of such supervisor, in any court of competent jurisdiction.



SEC. 43. Any person or persons, company or corporation, who shall run water across any public highway, road or street, without first constructing a good and sufficient ditch or ditches to convey the same, or who shall fail to bridge such ditch or ditches, or to keep such bridge or bridges or ditches, in good repair as required by this act, and all persons, companies or corporations who shall suffer any water used by them for the purpose of irrigation, or any other purposes, to flow into or upon any public highway, road or street, in any other manner than that authorized by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five nor more than fifty dollars, together with the costs of suit, and for a second offense double said fine and costs; and it is hereby made the duty of all road supervisors, constables and marshals, to make complaint before the proper court for violations of this section, whenever notified or having knowledge thereof.

Failure to  
bridge ditch  
used for con-  
veying water.

Allowing water  
to flow into or  
on any road.

SEC. 44. The act entitled, "An Act concerning roads, highways, trails and public thoroughfares," approved, January 12th, 1875, and all acts amendatory thereof, and all acts and parts of acts in conflict with this act, are hereby repealed; *Provided*, that an act concerning roads and highways in Boise County, approved Jan. 10th, 1873, and all acts amendatory thereof, or supplementary thereto, are not repealed or intended to be repealed by this act.

Repeal of acts.

SEC. 45. Each incorporated city in this Territory shall constitute a separate road district under this act, and the city council of each city shall, as far as relates to their city, have the powers conferred and perform the duties imposed upon the board of County Commissioners of their respective counties by this act. Each city council shall appoint a road supervisor, who shall, within such city, have the powers conferred and perform the duties imposed by this act upon road supervisors; and the city council may remove the supervisor, or may require a bond or settlement from him at any time, and shall fill any vacancy in such office; and may regulate the length, grade and size of bridges, causeways and culverts; may provide for the construction and maintenance of sewers, sidewalks and street crossings, and the grade and construction and maintenance of streets and alleys, and shall have all the powers as to streets and alleys, conferred by their respective charters or acts of incorporation, and by this act.

Each city con-  
stitutes a road  
district.

Powers of city  
council.

Powers of  
supervisor.

Further powers  
of city council.

Exceptions to  
act.

SEC. 46. This act shall not apply to the City of Lewiston, in the county of Nez Perce, nor to the county of Boise, except the "proviso" in section 44 of this act.

SEC. 47. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

## BRIDGES, FERRIES, ROADS AND TRAILS.

### AN ACT

TO AMEND AN ACT. ENTITLED "AN ACT IN RELATION TO THE CONSTRUCTION OF BRIDGES, FERRIES, ROADS AND TRAILS," APPROVED DECEMBER 20, A. D. 1864.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Amendments.

SECTION 1. That Section 6 of said act be amended by striking out of said section after the word "less" and before the word "conditioned" the following "than one hundred, nor more than one thousand dollars," and inserting in lieu thereof "than one thousand, nor more than ten thousand dollars."

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## PUBLIC ADMINISTRATOR.

### AN ACT

CONCERNING THE OFFICE OF PUBLIC ADMINISTRATOR.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

County Treasurers to be ex-officio public administrators.

SECTION 1. The county treasurers of the various counties of this Territory are hereby declared to be ex-officio public administrators in their respective counties.

Each public administrator shall, before he enters upon the duties of his office, take and file his official oath, and execute and file an official bond, conditioned as the bonds of other county officers are, with two good and sufficient sureties, in a sum not less than two thousand dollars; *Provided*, that the Probate Court may, upon reasonable cause therefor shown, require at any time a new bond, or an additional bond to be given upon ten days' notice in writing.

Bond of administrator.

New or additional bond.

SEC. 2. In all cases where any person shall die, seized or possessed of any estate within this Territory, or having any right or interest therein, and in the absence from the Territory of any person or persons entitled to administer as prescribed by the first seven sub-divisions of Section 52, of the Probate Practice Act, it shall be the duty of the Probate Judge upon the application of any person interested therein to commit the administration of such estate to the public administrator of the proper county. In all cases where administration shall have been granted to any public administrator as aforesaid, and it shall afterwards appear that there are persons entitled to the preference of administration by the first seven sub-divisions of said section 52 of the Probate Practice Act, it shall be the duty of the court to revoke the letters granted to such public administrator, and grant the same to such person as may be entitled thereto; *Provided*, that application shall be made to the Probate Court of the proper county, by such person or persons within six months after the letters shall have been granted to the public administrator as aforesaid, saving to the public administrator in all cases, all such sum or sums of money as may be due to him from such estate on account of commissions and expenses, due to and incurred by him in the management of said estate. The public administrator shall be entitled to the same fees and commissions for administration as other administrators or executors are paid.

Absence of any person entitled to administer.

Revocation of letters granted to public administrator.

Fees.

SEC. 3. Each public administrator, on final settlement of an estate and proper order of the court having jurisdiction, or before final settlement upon the regular order of the court aforesaid, shall pay over all moneys of such estate to the persons entitled thereto, in the same manner and subject to the same provisions as other administrators or executors.

Payment of money from estate.

SEC. 4. No public administrator shall be interested in anywise in any expenditures of any kind, made on account of any estate of a deceased person, upon which he

Interest in expenditures.

Same.	is administering, save as necessarily made in due course of such administration; nor shall he be associated in business with any one so interested; and he shall state in his reports that he has not been so interested or associated.
Misdemeanors in office.	SEC. 5. For any willful misdemeanor in office, any public administrator may be indicted, tried, and if found guilty, fined in any sum not exceeding two thousand dollar, and removed from office; but such fine and removal shall not bar any existing right of civil action upon his official bond.
Information.	SEC. 6. It shall be the duty of all persons, especially of all civil officers, to give all information in their possession to public administrators respecting estates, and the property and condition thereof, upon which no other person has then administered.
Actions at law.	Public administrators may, and it is hereby made their official duty, to institute, maintain and prosecute all necessary actions at law and in equity, for the recovery and for the protection of the property, debts, papers, or other estate of any deceased person upon whose estate they may be administering.
Rules of conduct.	SEC. 7. Except as in this act otherwise provided, public administrators in distributing or administering upon estates, shall be governed by the same rules and laws by which other administrators or executors are.
Recovery of money.	SEC. 8. Any money paid into the Territorial Treasury under the provisions of this act, may be recovered by the rightful heirs or legatees thereof in the following manner: Such heir or heirs, legatee or legatees, may present their claim therefor to the Probate Court which had jurisdiction of the final settlement of the estate to which such money belonged, and make proof of the validity of such claim, after due notice given to the treasurer of the Territory, to the satisfaction of such court, under such rules as it may prescribe. If satisfied on the hearing that such claimant or claimants are rightfully entitled to the same, the court shall enter a decree that such money be paid to him or them. Such decree shall then be certified to the Controller, who shall draw his warrant on the treasurer, who shall pay the same; <i>Provided</i> , no proceedings shall be maintained under the provisions of this act unless within two years next after the final settlement of the estate to which they relate; and <i>provided further</i> , that all costs of such proceedings shall be paid by the applicant or applicants. If not applied for within two years, as above provided, or if applied for and not ob-
Time in which to recover money.	
Costs of proceedings	

tained, such moneys shall then be placed in the general Territorial school fund. Either party to the proceedings mentioned in this Section shall have the same right of appeal as in other proceedings in the Probate Court. Money to be paid in school fund.

Sec. 9. Public administrators shall not be required to make formal application for letters of administration; nor shall he be required to file or have approved any bond, except as such public administrators in any case. Application for letters. Bond.

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved February 9th, 1881.

## LIVE STOCK, OWNERS OF LIVE STOCK AND RANCHERS.

### AN ACT

TO PROTECT RESIDENT STOCK OWNERS, AND RANCHERS,  
AND PROVIDE FOR THE BRANDING AND MARKING  
OF LIVE STOCK.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Every person, whether owner or employee, who shall drive or bring, or assist in driving or bringing any cattle, horses, mules, asses, sheep, or hogs, through, or into this Territory, shall be deemed a stock-drover. Stock drovers. Every person who owns any cattle, horses, mules, asses, sheep or hogs, in this Territory, and is engaged in the business of breeding, growing, or raising the same for profit, shall be deemed a stock-grower; and all cattle, horses, mules, asses, sheep, and hogs shall be deemed live stock. Stock growers. Live stock.

SEC. 2. Every stock-grower in this Territory shall use one, and only one brand and mark for cattle; *provided, that any stock-grower may use a smaller sized brand to brand his cattle on the horn or horns, of the same kind as his flesh brand;* one and only one brand or mark for horses, mules, and asses; one and only one brand or mark for sheep; and one and only one brand or mark for hogs; which brands and marks, shall be placed upon some conspicuous part of the animal to be branded or marked; Brand for cattle. Brand for horses. Brand for sheep and hogs.

Brand for all  
live stock.

*Provided*, that nothing in this act forbids the use of one brand or mark for all or several of the four classes of live stock hereinbefore enumerated in this section; but a stock-grower may, at his option, use a different brand and mark for each of the aforesaid four classes of live stock.

Purchase of  
stock and  
brands.

SEC. 3. In all cases of the purchase of an entire band of live stock by any resident stock-grower, together with the sole right to the brand of the party selling said live stock, it shall be lawful for the party purchasing such band and brand to have such purchased brand recorded in his own name, upon presentation to the County Recorder of the county where such brand is recorded of a duly authenticated bill of sale of such brand and band of live stock; but it shall not be lawful for any stock-grower to use more than one of these brands or marks, on the increase of his band of live stock.

All live stock  
to be marked.

But the provisions of this section shall not be so construed as to release any stock-drover from the obligations to brand or mark all live stock driven through any portion of this Territory, as hereinafter provided.

Record of  
brands.

SEC. 4. Every stock-grower shall record, in the office of the County Recorder of his county, a full and correct description of his brands and marks, describing particularly on what part of the animal to be marked or branded, the brand or mark shall be placed. He may, also, at his discretion, record the same in the office of the County Recorder of any other county or counties within this Territory.

Place of  
branding.

SEC. 5. No stock-grower in this Territory shall hereafter use any other brands or marks than the brands and marks recorded, as provided for in section four of this act, which shall in all cases be placed on the part of the animal designated in the description so recorded, and no other. When there is already a brand on that particular place, then as near thereto as possible.

Time within  
which to se-  
lect brand.

SEC. 6. Every stock-grower who has not already fully complied with all the provisions of this act relative to the branding of live stock, shall, within six (6) months from the date of the passage of this act, select his brand, and as far as may be possible, brand all his live stock in this Territory, as required in this act, but he shall not be required by this act to mark his live stock; *Provided*, that stock kept up for use need not be branded unless the owner or owners choose to brand them.

SEC. 7. Any stock-grower in this Territory may select an ear-mark, and after recording the same as herein-

before provided, may use the same in marking his live stock.

Such mark shall be made by cutting or shaping the ear or ears of the animal so marked; but in no case shall the person so marking the animal cut off more than one-third of the ear so marked. Neither shall any person mark by cutting an ear on both sides to a point. Ear-brands.

SEC. 8. No stock-grower shall have recorded or use, and no County Recorder shall record, any brand or mark which has been previously selected or recorded by any person or persons in his county, unless the same has been abandoned, and notice of the abandonment duly recorded by the County Recorder of his county, except as provided in Section 3 of this act. Same brand not to be recorded by more than one stock-grower.

SEC. 9. Partners in stock-growing may adopt and use partnership brands or marks, in which case they must select, record and use the same in the manner provided for the individual stock-growers in this act, or they may adopt and use the individual brand or brands, mark or marks, of any individual member or members of the partnership, duly selected and recorded as provided in this act. Partnership brands.

SEC. 10. No stock-grower or stock-growers, or other person or persons, in this Territory, shall change, conceal, deface, disfigure or obliterate any brand or mark previously branded, impressed or marked on any head of live stock, or put his or their own, or any other brand upon or over any part of any brand previously branded upon any head of live stock, and no person or persons shall make or use any counterfeit of any brand or mark provided for in this act. Defacing or counterfeiting of brands.

SEC. 11. In all suits at law, or in equity, or in any criminal proceedings, in this Territory, where the title of any live stock is involved, the brand on any such animal shall be *prima facie* evidence of the ownership of the person whose brand it may be; *Provided*, that such brand has been duly recorded as required by this act. Ear-marks, when used and recorded, shall be taken in evidence in connection with the owner's recorded brand, in such suits. Brand to be prima facie evidence of ownership.

Proof of the right of any person or persons, to use such brand or mark shall be made by a copy of the record of the same, certified by the County Recorder of any county in which the same is recorded, under the hand and seal of office of such Recorder. Right to use of brand to be shown by copy of record.

SEC. 12. It shall be the duty of every stock-drover to select and use a road brand for all live stock driven or Road brands.



Same.

moved through or into this Territory, by him or by his assistance or direction, which road brand shall be plainly and distinctly branded on some conspicuous part of each animal; and it shall be the imperative duty of every such stock-drover or his assistants, each day to carefully search through and examine his herd or drove after driving or moving them over any portion of this Territory, and separate from, and drive and keep away from his herd or drove, all live stock not belonging thereto, or not branded with his road brand; *Provided*, that any drover or drovers may drive the stock of other drovers with different brands; *Provided*, he or they have written authority from the owner or owners to drive said stock.

Cattle not belonging to stock-drover found in his herds.

Driving cattle from range by person not owning the same.  
Penalty of.

SEC. 13. Any person or persons, not being the owner or owners, or entitled to the possession of any head of live stock, who shall be found knowingly and willfully driving, riding or leading, or assisting to drive, ride or lead, the same away from its usual range in this Territory, unless he shall corral the same at the first corral nearest to such range, shall be guilty of a misdemeanor, and punished as hereinafter provided. And proof that such person or persons were so found driving, riding or leading such live stock from its usual range, as aforesaid, shall be, on trial, evidence sufficient to warrant a conviction, unless the evidence produced on the trial shows that the accused acted in good faith, and with an innocent purpose; *Provided*, that any stock-grower or his employes shall be allowed to drive any stock that he or they may find herding with any stock belonging to them or under their control, on the range, to the nearest suitable corral that can be obtained and there separated from the stock of said stock-grower, and such stock shall be by them driven or caused to be driven back to or near the range from which such stock was driven.

Evidence warranting conviction.

Corrall of cattle not owned by a drover.

Liability to civil action.

SEC. 14. Any stock-drover or other person engaged in driving or moving any herd or drove of live stock through this Territory, who shall, without the owner's consent, drive or move, or assist in driving or moving, any head of live stock, the property of another person, or other persons, away from its usual or accustomed range in this Territory, shall be guilty of a misdemeanor, and punished as hereinafter provided; and shall also be liable for damages in a civil action in any court of competent jurisdiction in this Territory by the party injured, for double the value of each head of live stock so as aforesaid driven or moved away, together with costs of suit; and the party injured may, at the commencement of such

civil action, or during the pendency thereof, have such herd or drove of live stock or such number of live stock thereof as shall be sufficient, attached, seized and held as security for all damages and costs that may be recovered in such action. Attachment of  
of stock.

SEC. 15. Any person or persons owning or having charge of any herd or drove of live stock, who shall drive or move the same into or through any county in this Territory, in which the owner thereof is not a resident or land-owner, and where the land is owned or is occupied and improved, shall prevent such herd or drove from mixing with the live stock belonging in said county, and shall also prevent such herd or drove from trespassing on land in the possession of any actual settler, and used by him for grazing purposes, or for the growing of grain, hay or other crops, or injuring any ditches owned or used by such settler. If any owner or person in charge of any such herd or drove of live stock, shall willfully or negligently injure any resident of this Territory by driving or moving such herd or drove of live stock from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, he shall be deemed guilty of a misdemeanor, and punished as hereinafter provided; and shall also be liable in a civil action to the party injured for the damages by him sustained. Prevention of  
trespassing of  
cattle. Herding of cat-  
tle on im-  
proved land,  
penalty for. Liability to  
civil action.

SEC. 16. The County Commissioners of any county in this Territory shall, upon petition of any five of the resident stock-owners of said county, appoint one or more inspectors; said inspectors shall be experienced stock men, and duly sworn to faithfully perform the duties and requirements of this act, whose duty it shall be to discover and detect any violation of this act, or of any act in this Territory relating to live stock. Said inspector or inspectors shall have full power to cut out and separate from any herd or drove of live stock, all range stock of every description not belonging to such herd or drove, and to detain the herd or drove for that purpose, and shall have full power without a warrant, to arrest any person or persons violating any of the provisions of this act, and take them before any court having jurisdiction of the offense, shall receive such compensation for his or their services as shall be allowed by any board of County Commissioners of such county, to be paid out of the county treasury of such county. Any board of County Commissioners in this Territory may offer and provide for the payment of suitable rewards for the detection of any violations of this act. Stock inspect-  
ors. Duties and  
powers of in-  
spectors of  
stock. Compensation  
of stock in-  
spectors.

Violation of provisions of this act and penalty for

SEC. 17. Any person violating any of the provisions of this act, or of any section thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

Exceptions.

SEC. 18. The provisions of this act shall not apply to Nez Perce, Idaho and Shoshone counties.

Repeals.

SEC. 19. That the act of the Legislative Assembly of the Territory of Idaho, entitled, "An Act relating to Marks and Brands," approved January 10, 1867, and all acts and parts of acts in conflict with this act are hereby repealed.

Time of taking effect.

SEC. 20. This act shall be in effect from the date of its passage, and the act entitled "An Act relating to Marks and Brands," approved January 10, 1867, and all existing acts in conflict with this act, shall be of no further force, except in the counties of Nez Perce, Idaho and Shoshone, to which this act shall not be applicable.

Approved February 9, 1881.

## INDIGENT INSANE.

### AN ACT

TO PROVIDE FOR THE INDIGENT INSANE OF THE TERRITORY OF IDAHO.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Commissioners.

Contract.

SECTION 1. The Governor of Idaho Territory, and John Hailey, the President of the Council thereof, are hereby appointed Commissioners of Idaho Territory, to contract on behalf of said Territory, with the proper authorities of the State of California, or Oregon, or both, or with the proprietor or proprietors of any insane asylum in either or both of said States, for the keeping, treatment, and maintenance of the indigent insane of Idaho Territory, if in the judgment of said Commissioners, such contracts can be made upon reasonable terms, and in such manner as to secure the skillful treatment of such persons.

SEC. 2. After such contract or contracts have been made and entered into, copies of the same shall by said Commissioners be distributed to the boards of County Commissioners, and the auditors and recorders of the several counties of this Territory.

Distribution of  
copies of con-  
tract.

SEC. 3. Whenever such contract or contracts shall have been made as aforesaid, any person who is alleged to be indigent and insane, and a resident of the county where the complaint is made, shall be brought before any Court of Record of said county, or a judge thereof, and examined, and if the evidence produced at the examination shows that the person examined is a resident of said county, and is indigent and insane, and should for the security of the public or for the good of such insane person, be kept in custody, the said court or judge shall make an order to that effect, and the person so declared to be insane, as aforesaid, shall be conveyed to the proper asylum which shall be designated in such order, at the expense of the county of which he or she is a resident, but the expense and all charges for the care, treatment, and maintenance of such insane person at such asylum, as well as the expenses incident to a discharge therefrom, or death, shall be chargeable to and paid by the Territory; *Provided*, that if it shall appear from such examination before such court or judge that such person is indigent and insane, but that such insanity is of a character that the public safety or the good of such person does not require him or her to be confined, such court or judge shall so certify, and such person shall be cared for as is now provided by law for the care of the indigent, sick, idiotic, and insane persons in the several counties of this Territory.

Examination  
of alleged in-  
sane.

Conveyance to  
asylum at ex-  
pense of  
county.

Care of insane  
not dangerous.

SEC. 4. All examinations of persons alleged to be insane shall be public, and the court or judge before whom the examination shall be held, shall not order, adjudge or decree the person examined to be insane, unless at least one physician, a graduate in medicine, testifies on the examination that he believes the person so examined is insane, and whether, in his opinion, it would endanger the public safety to permit such person to run at large. If it appears at such examination that the person so examined is insane, but not a resident of the county in which the examination is held, and is a resident of another county in this Territory, the court or judge shall by order direct that the person so examined and all the papers relating to the case, be turned over and delivered to the proper court or judge of the county

Examination  
of insane to  
be public.

Testimony of  
physician.

Transfer of  
examination to  
proper county.

**Powers of the court.**

of which the person so examined is a resident, which court or judge shall examine the case anew. For the purpose of such examinations or of any examination of a person alleged to be insane, under the provisions of this act, any court or judge having jurisdiction is authorized to issue subpoenas, warrants of arrest, or any other process necessary for the exercise of the jurisdiction conferred by this act, and have them duly served by the sheriff or other proper officer.

**Transportation of insane to asylum and duty of person in charge.**

SEC. 5. The several boards of County Commissioners of this Territory shall provide for the transportation of any person found to be insane, and ordered to be placed in an asylum as aforesaid, from their respective counties, to the proper asylum, and the person or persons in charge of such asylum shall in every instance execute a certificate in duplicate, certifying at what time and from what person any such insane person was received at such asylum. One copy of which certificate shall be filed with the clerk of the board of County Commissioners of the proper county, and the other copy with the Territorial Controller.

**Duty of manager of asylum.**

SEC. 6. It shall be the duty of the owner, proprietor, or managing agent of any asylum with whom such contract as aforesaid, be made to render to the Territorial Controller a verified account, at least, once every three months, for the keeping of any insane person, together with a statement showing the condition of any such insane person or persons under treatment at such asylum, and if any such insane person die, escape, or be discharged from such asylum, to immediately report the fact, and date of every such death, escape, or discharge to the said Controller.

**Claims against the Territory for care of insane.**

SEC. 7. All claims against the Territory for the maintenance and care of the indigent insane in any such asylum shall be presented to the Territorial Controller, who shall credit the same, and if the account is correct and due, he shall draw a warrant for the amount payable out of the Territorial Treasury out of any moneys not otherwise appropriated, and the Territorial Treasurer shall pay the same in its regular order.

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This Act shall take effect and be in force from and after its passage.

Approved January 25, 1881.

## INDIGENT, SICK, IDIOTIC AND INSANE.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE BETTER MAINTENANCE OF INDIGENT, SICK, IDIOTIC AND INSANE PERSONS IN THE SEVERAL COUNTIES OF THIS TERRITORY," APPROVED DEC. 13, 1864.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The board of County Commissioners of Nez Perce County are hereby empowered to levy, and cause to be collected annually, a sum not to exceed one-half of one per cent. on the value of all taxable property of said county as may be deemed by them necessary and sufficient for the support of indigent, sick, idiotic and insane persons. <sup>Tax for support.</sup>

SEC. 2. That all of section first of said act, and all acts and parts of acts in conflict with the provisions of this act, so far as they relate to Nez Perce County, be and the same are hereby repealed. <sup>Repeals.</sup>

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved January 28th, 1881.

## TERRITORIAL PRISONERS.

### AN ACT

TO PROVIDE FOR THE KEEPING, DISCIPLINE AND MANAGEMENT OF THE TERRITORIAL PRISONERS.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The penitentiary building erected and

**Territorial  
prison.**

**Working of  
prisoners.**

**Proceeds of  
labor.**

**Contract for  
keeping.**

**Monthly settle-  
ments.**

**Issue of war-  
rants for  
keeping or  
prisoners.**

conducted by the United States, in the County of Ada, in this Territory, is hereby declared to be the general penitentiary and Territorial Prison of the Territory of Idaho, wherein shall be confined for reformation and punishment, and employed at hard labor, all offenders who have been or shall hereafter be convicted and sentenced according to law to imprisonment in the Territorial Prison; and all persons convicted of crime against the laws of this Territory and sentenced to confinement in the Territorial Prison, shall be sentenced to hard labor during the term of their confinement, and shall perform such labor under such rules and regulations as may be prescribed by the Governor of the Territory, the United States Marshal and the Territorial Treasurer; and they may make regulations for working prisoners outside of the prison walls between sunrise and sunset; *Provided*, that the safe keeping of the prisoners shall not be endangered thereby, and they shall be returned within the prison walls before sunset; and the Territory shall not be liable for any additional expense for guards, and the net proceeds of the labor of Territorial prisoners shall be credited to the Territory in the monthly accounts for keeping the prisoners.

SEC. 2. The Governor and Treasurer may contract and arrange, on the part of the Territory, to and with the United States, for the reception and keeping of all Territorial prisoners; *Provided*, that any subsisting contract or arrangement shall not be affected by this act.

SEC. 3. At the close of each month the Governor shall certify to the Territorial Controller the sum due the United States in lawful money, for the keeping, boarding, clothing, washing and medical attendance of the Territorial prisoners, for such month, and if there be sufficient money in the Territorial Treasury, not required for the payment of the principal or interest of the bonded debt of the Territory, the Controller shall upon such certificate of the Governor, draw his warrant upon the Territorial Treasury in favor of the United States Marshal for the amount so certified, and the Treasurer shall pay the same; but if there be not sufficient money in the Treasury applicable thereto, the Controller shall advertise in some newspaper published at the capital of the Territory, that sealed proposals for Territorial warrants, for the amount due the United States, in lawful money, for keeping Territorial prisoners, will be received by him until twelve o'clock noon of a day named, which shall not be less than five days from the first pub-



lication of said notice; and the controller shall, at the same time named, open said bids in a public manner, in the presence of the Territorial treasurer, and they may reject any or all of said bids and re-advertise if they consider the bids too low; otherwise the controller shall draw his warrant upon the treasury in favor of the person making the highest bid, and deliver said warrant to the highest bidder on receipt of the money therefor, and he shall pay said money to the United States Marshal upon his receipting his account.

SEC. 4. The act of the Legislature entitled "An Act to provide for the imprisonment of Territorial prisoners, in county jails in certain cases," approved January 8th, 1877, is not affected by this act, but all persons sentenced to imprisonment in the Territorial prison, shall, unless retained in the county jails as provided by said act, be delivered by the sheriff of the proper county, or his deputy, to the person in charge of said prison, and the officers delivering such prisoners shall receive the following compensation, and no more, for such services, to-wit: For conveying, guarding and boarding one prisoner, fifty cents per mile, one way, for each mile actually and necessarily traveled, and for each additional prisoner twenty cents per mile; and it shall be the duty of the Governor, controller and treasurer, or any two of them, to audit said accounts, and the controller shall draw his warrant upon the Territorial treasury for the amount and deliver the same to the officer entitled thereto, and the treasurer shall pay the same.

Fees for delivery of prisoners.

SEC. 5. An act entitled "An Act to provide for the keeping and accommodation of Territorial prisoners," approved January 13, 1871, and the act supplementary to said act, approved February 21, 1879, and the Acts amendatory of said acts, and all acts and parts of acts in conflict with this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## ENCLOSURES AND TRESPASSING OF ANIMALS.

### AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED, "AN ACT REGULATING ENCLOSURES, AND TO PREVENT THE TRESPASSING OF ANIMALS," APPROVED JANUARY 10, 1867

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Wire fences.

Boards on poles above wire fences.

Inside cross-fences.

Building of wire fences.

Neglect of the provisions of this act.

SECTION 1. All persons who may be the owners of barbed or other wire fences, shall, before the 1st day of July, A. D. 1881, place or cause to be placed and to keep in place thereafter, above the top wire, and not less than four feet from the ground, a board, rail, pole or block-wire the whole length of such fence; *Provided*, that in case a rail or pole be placed on top of said fence, such rail or pole shall average not less than three inches in diameter; and in case a board be placed on top of said fence, such board shall not measure less than six (6) inches in width, nor less than one and one-fourth inches in thickness; *Provided, further*, that each and every wire belonging to any wire fence shall be kept securely fastened to each and every post belonging thereto; *Provided, further*, that the provisions of this act shall not apply to inside cross-fences that a person or persons may have on their premises.

SEC. 2. That all persons who may, after the passage of this act, build any barbed or other wire fence, shall, at the time of building the same, place or cause to be placed, and keep in place thereafter, the board, rail, pole or block-wire, as described in the preceding section.

SEC. 3. Any person or persons who shall neglect or refuse to comply with the provisions of this act, shall be held liable to the owner or owners of any live stock for any damages occasioned by such fence; and any person or persons so neglecting or refusing shall be deemed

guilty of a misdemeanor for each and every thirty days <sup>same.</sup> such person or persons so neglect or refuse, and upon conviction, shall be fined in any sum not less than ten, or more than fifty dollars, which fine shall be collected as other fines are collected, and paid into the county treasury for the benefit of the school fund of the county in which said fine is collected.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 4, 1881.

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## CHATTEL MORTGAGES.

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### AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT CONCERNING CHATTEL MORTGAGES," APPROVED JANUARY 12, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. There is hereby added to the act to which this act is supplementary, a section eighth, to read as follows:

SEC. 8. If the mortgagor of any property mortgaged in pursuance of the provisions of this act, shall, while such mortgage remains unsatisfied in whole or in part, willfully "remove from the county or counties where the mortgage is recorded," destroy, conceal, sell, or in any manner dispose of the property mortgaged, or any part thereof, without the written consent of the holder of such mortgage, he shall be deemed guilty of larceny, and upon conviction shall be punished accordingly; and any such sale or transfer shall be void. Penalt: for disposal of mortgaged property

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 9, 1881.

## INSURANCE COMPANIES.

### AN ACT

#### RELATING TO INSURANCE COMPANIES.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Tax on resident agents.

SECTION 1. There shall be levied and collected on insurance agents a tax as follows:

First. The resident agent of each and every life insurance company not incorporated under the laws of this Territory, and transacting an insurance business therein, shall pay a tax of 5 per cent. on the gross amount of premiums received by him, said tax to be paid quarterly to the county treasurer, which shall constitute a part of the Territorial school fund.

Tax on non-resident agents.

Second. Every person who is not bona fide [bona fide] a resident of this Territory, transacting business therein, for any insurance company not organized under the laws of this Territory, shall, before engaging in said business, pay a quarterly license of one hundred dollars, payable to the county treasurer, which shall constitute a part of the Territorial school fund.

Fine for doing business without a license.

SEC. 2. Any person or persons, agent or agents of any such company or corporation, who shall transact an insurance business without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace or court having jurisdiction thereof, shall be fined for each and every offense the sum of one hundred dollars, or be imprisoned in the county jail of the county where such offense is committed, for a term not exceeding six months.

Acts repealed.

SEC. 3. The following acts are hereby repealed, to-wit: An act entitled "An Act relating to Insurance Companies," approved January 10, 1871, and an act amendatory thereto, approved January 8, 1875.

SEC. 4. This act to take effect and be in force from and after its approval by the Governor.

Approved January 22, 1881.

## GAME.

### AN ACT

TO AMEND AN ACT TO PROTECT CERTAIN GAME IN IDAHO TERRITORY, APPROVED JANUARY 12, 1875.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section one of said act is hereby amended to read as follows:

SECTION 1. It shall not be lawful for any person or persons, after the passage of this act within the Territory of Idaho, to kill or destroy any quail or partridge, or trap or carry away the same, or destroy their eggs, prior to the first day of September, A. D. 1883.

SEC. 2. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act to take effect from and after its passage.

Approved February 10, 1881.

Certain game not to be killed prior to a certain date.

## FIREMEN.

### AN ACT

TO EXEMPT OFFICERS OF FIRE COMPANIES FROM JURY DUTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The following officers of all fire companies in actual operation and ready for duty, are hereby exempt from jury duty: one chief engineer, and one as-

Certain mem-  
bers exempt  
from jury duty.

sistant; one foreman and two assistant foremen for each company; and for steam fire engine companies, in addition, one engineer, one assistant engineer and one stoker, and eight pipemen, to be designated by the foreman.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## RESOURCES OF IDAHO — PUBLICATION OF.

### AN ACT

EMPOWERING THE GOVERNOR OF THIS TERRITORY TO CONTRACT FOR THE PUBLICATION OF A WORK ON THE RESOURCES OF IDAHO.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Governor to  
make contract.

SECTION 1. That the Governor of this Territory is hereby authorized and empowered to enter into a contract on behalf of said Territory, with Robert E. Strahorn for the preparation of the manuscript of a pamphlet relating to, and which shall embrace as far as practicable, a descriptive account of the progress and present condition of the mining, agricultural and grazing industries, and of the climate and scenery of Idaho, together with statistics of the financial condition thereof, and health and mortuary reports of the same.

Payment.

SEC. 2. Upon the completion of said manuscript, the Governor, if satisfied that the publication of the same will be beneficial to the interests of the Territory, shall certify to the controller that said work has been completed, and upon the filing of the said certificate, showing that the same is prepared in accordance with the terms of the contract, the controller shall draw his warrant on the treasurer in the sum of three hundred (300) dollars, and the same shall be paid by said treasurer.

SEC. 3. The Governor is further empowered to enter into contract with the said Robert E. Strahorn, for the publi-

cation of the work so to be prepared, in which said contract shall be inserted, substantially, the following conditions: First, that the said Robert E. Strahorn will publish his work in pamphlet form of not less than eighty (80) pages; that the same shall have inserted therein a good county map of the Territory, which map shall be as authentic and accurate in its details as it can be made from present information, the same to be in one color, and of the dimensions of eight (8) by fourteen (14) inches.

Conditions of contract.

Second, that said pamphlet shall contain not less than six (6) engravings of Idaho scenery, in style not inferior to those contained in the pamphlet on the Territory of Montana.

Third, that said pamphlet shall be arranged, published, and bound in the manner and in style in all respects equal to the standard of the Montana pamphlet, published and furnished by said Strahorn, the quality of paper, typographical appearance, and general execution thereof not to be inferior to said model submitted by him.

SEC. 4. Whenever the said Robert E. Strahorn shall, before the thirty-first day of August, A. D. 1881, deliver to the Governor six thousand (6,000) copies of such pamphlet, and a certificate from some proper officer of the Union Pacific Railroad Company, that fourteen thousand (14,000) copies thereof have been delivered at the office of said company either in Omaha, Nebraska, or Chicago, Illinois, the Governor, if satisfied that the work has been executed faithfully according to contract, shall make his certificate to the controller of the fact of the delivery to him of the said number of copies, and of the receipt by him of the certificate of said company, and thereupon the said controller shall draw his warrant on the Territorial treasurer in the sum of twelve hundred and twenty-five (1225) dollars, in favor of the said Robert E. Strahorn, which, when paid by said treasurer, shall be in full compensation for twenty thousand copies of said pamphlet.

Delivery of 6000 copies to the Governor.

14000 copies to U. P. R. R. Co.

Governor to make certificate.

Contractor to draw warrant

SEC. 5. Of the said copies so to be delivered to the Governor, he may retain five hundred (500) thereof, for the use of his office; and shall deliver to the controller of the Territory the remaining five thousand five hundred (5,500) copies. The said controller shall distribute said copies as follows: To each of the judges of the Supreme Court one hundred (100) copies; to the secretary of the Territory, two hundred (200) copies; to the Territorial treasurer, one hundred (100) copies; to each member of

Disposal of by the Governor.



Same.

the Legislative Assembly, at the present session, one hundred (100) copies; to the Secretary of State of each State, and secretary of each Territory, two (2) copies; to the librarian of Congress at Washington, D. C., ten (10) copies; the residue the controller shall distribute as he shall deem proper.

Appropriation for charges of carriage and delivery.

SEC. 6. There is hereby appropriated out of the Territorial treasury, an additional sum of two hundred (200) dollars, or so much thereof as may be necessary, which shall be drawn for in sums as occasion may require, to defray the expense and charges for carriage and delivery of the said six thousand (6000) copies herein required to be delivered to the Governor, and the cost of mailing, or otherwise distributing the five thousand five hundred (5,500) copies to be made by said controller in the last above section.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved January 29, 1881.

## SUPREME COURT REPORTS.

### AN ACT

AUTHORIZING THE DECISIONS OF THE SUPREME COURT TO BE PUBLISHED.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Preparation,

SECTION 1. Hon. H. E. Prickett, Associate Justice of the Supreme Court, is hereby authorized, without compensation from the Territory, to prepare and cause to be printed, a volume of the decisions of the Supreme Court of this Territory, with a brief abstract of each case and briefs of counsel when necessary, with suitable notes of the points decided in each case, and an index. Said volume shall be called the Idaho Supreme Court Reports, Volume I, new series, and shall contain all the decisions of said court from its organization to the present time; it shall be printed and bound in a good substantial manner and form, of good material for law books, and of a style and quality not inferior to volume fifty of the California Reports.

Printing and binding.

SEC. 2. The Territory of Idaho hereby agrees to purchase of the publishers, four hundred copies of said volume, at a price not exceeding six dollars per volume. Purchase.  
Price.

SEC. 3. Whenever the four hundred volumes agreed to be purchased by the last section shall have been delivered to the secretary of this Territory he shall certify that fact to the Territorial Controller, who shall draw his warrant upon the Treasurer for the sum of money due therefor, not exceeding six dollars per volume; and also for all freight charges thereon; which warrants shall be payable out of the general fund, and a sufficient sum of money to pay the same is hereby appropriated for that purpose. Payment.

SEC. 4. The Secretary of the Territory must distribute and dispose of said volumes, as follows: Distribution.

1. To the Library of Congress, two copies.
2. To each department of State of the United States, at Washington, one copy.
3. To the Idaho Law Library, two copies.
4. To each State and Territory of the United States, one copy.
5. One copy each to the Justices of the Supreme Court of this Territory, and to the Governor, Secretary, Treasurer, Controller, and United States district attorney of this Territory, each one copy.
6. To the Clerk of the Supreme Court, one copy. To each clerk and deputy clerk of the District Courts, to each probate judge, justice of the peace and district attorney of this Territory, one copy.
7. The surplus must be kept on hand by the Secretary of the Territory for future distribution, as subsequent laws may direct. Surplus.

SEC. 5. The secretary shall take a receipt from each person, and officer named in subdivision five and six of the last section, to whom he shall deliver a volume of said reports, and file the same in his office, and each copy delivered to said officers shall be marked "Territorial Property" on the inside of the cover, and each of said officers shall deliver such volume to his successor. Receipt.

SEC. 6. The said H. E. Prickett is hereby authorized and required to contract with the publishers that there shall be not less than eight hundred copies of said volume printed, and that the price to citizens of this Territory shall not exceed six dollars per volume. Contract.

SEC. 7. This act shall take effect, and be in force from and after its approval by the Governor.

Approved December 28, 1880.

## COURT HOUSE AND JAIL BUILDING IN ADA COUNTY.

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### AN ACT

PROVIDING FOR THE ERECTION OF A COUNTY COURT  
HOUSE AND JAIL BUILDING AT BOISE CITY, THE  
COUNTY SEAT OF ADA COUNTY.

*Be it enacted by the Legislative Assembly of the Terri-  
tory of Idaho, as follows:*

Place of erec-  
tion.

SECTION 1. There shall be erected in Boise City, Ada county, on the county block, number sixty-five, according to the official plat of said city on file in the Recorder's office of said county, a county court house and jail building, with suitable rooms for the accommodation of the District Court held in and for said county, and the several county officers of said county, including suitable jury rooms and judges' chambers, and an office for the district attorney, and for the Clerk of the District Court; and the foundation and basement of said building shall be built of good, durable stone, and the walls of good brick, and the building shall be constructed and finished of good materials, under the direction and supervision of a competent architect or builder; and the basement of said building shall be not less than nine feet in the clear between floor and ceiling, and the floor shall not be more than three feet below the surface of the ground; and so much of said basement as may be necessary shall be finished and completed as a county jail, with six iron box cells; and the first story above the basement shall be not less than thirteen feet in the clear between the floor and the ceiling, and shall be finished and completed for the necessary county offices; and the offices of the recorder and auditor, of the clerk of the District Court, and of the Probate Judge, shall be made fire-proof, or shall be furnished with fire-proof vaults sufficient for the protection and preservation of all the pub-

Vaults for  
records.

lic records and papers pertaining to their respective offices; and the office of the County treasurer shall be furnished with a fire and burglar-proof vault, sufficient to secure the safety of the public moneys belonging to said county; and the second story of said building shall be not less than fifteen feet in the clear between floor and ceiling, and shall be finished and completed for a court room, and the necessary jury and other rooms. Same.

SEC. 2. For the erection, completion and furnishing of said court house ready for use, as aforesaid, there shall be issued by said County of Ada, fifty thousand dollars of negotiable coupon bonds, in denominations of one hundred, five hundred and one thousand dollars, bearing interest at the rate of eight (8) per centum per annum, payable semi-annually, on the first day of January and the first day of July in each year; and the principal of three thousand dollars of said bonds shall become due and payable on the first day of January, A. D. 1887, and three thousand dollars annually thereafter until all are paid; and the length of time that each of said bonds runs before maturity shall be expressed on the face thereof, and each shall have attached, when negotiated, semi-annual interest coupons covering the interest thereon at the rate aforesaid, from the first day of January or the first day of July next after its sale until its maturity as expressed upon the bond, and no more. Said bonds shall be signed by the chairman of the board of County Commissioners of said county, and attested by the clerk of the board, and its seal, and countersigned by the Treasurer of Ada county; and said Treasurer shall number said bonds consecutively, and register the same in a book kept in his office for that purpose, which shall be a public record, and which shall show the dates of the negotiation and maturity of each, and the number of coupons attached to each when negotiated; and said Treasurer shall cancel each coupon detached from each bond before it is negotiated, and each coupon and bond redeemed, in the presence of the board of County Commissioners at their next meeting after any such coupon is so detached, or any coupon or bond is so redeemed after which they shall be at the disposal of the board. The principal and interest of all bonds issued under this act shall be payable and shall be paid according to the terms thereof, at the office of the County Treasurer of Ada County, in Boise City, by the Treasurer. Bonds for erection of

SEC. 3. The board of County Commissioners of said county shall immediately after the passage of this act Engraving of bonds.

Sale of bonds.

Plans of  
bul. ding.

Contract.

Addition  
bonds.

secure the proper engraving and printing of the bonds authorized by this act, and shall pay the necessary expenses thereof out of the County treasury, and said board shall without delay negotiate and sell the same for cash, and the proceeds thereof shall be placed in the County treasury, and devoted to the erection, completion and furnishing of said building; but not more than one-half of said bonds shall be sold until proper plans and complete specifications for the erection, completion and furnishing of said building are secured and adopted by the board; such plans and specifications shall be made by a competent architect, which plans and specifications shall not cost to exceed one thousand dollars, and shall be obtained in such manner as the said board of Commissioners shall deem best, as soon as practicable after the sale of one-half said bonds; but said plans and specifications shall be invited, and the contract or contracts let, shall be on the basis of the erection, completion and furnishing of said building in all respects, ready for use for the several purposes aforesaid, for the sum of fifty thousand dollars and not more; but if from any unforeseen cause it shall become necessary for the completion or furnishing of said building, in all respects ready for use as aforesaid, said board of Commissioners may issue an additional amount of said bonds, not exceeding ten thousand dollars additional; and such additional bonds shall be in all respects as above described, and shall be registered and numbered consecutively after the bonds described in section two; and three thousand dollars thereof shall mature and be made payable on the first day of January next after the last of the bonds mentioned in section two mature, and a like amount annually thereafter until all are paid.

Bids for  
building.

SEC. 4. The board of County Commissioners is hereby vested with full power to make all necessary arrangements and contracts for the building of said court house and jail, in such manner as said board may deem for the best interests of said county. Immediately after the adoption of plans and specifications for said building, the board shall advertise for thirty days, in such newspapers as said board shall select, for bids for the erection, completion and furnishing of said building, according to the plans and specifications adopted, and for bids for the furnishing of any particular kind or class of material, or the performance of any particular kind of work necessary in the erection of said building; and the board shall, in said advertisement, reserve the right to reject

any and all bids. The board shall open all bids publicly <sup>same.</sup> at a day to be fixed by them in the advertisement, not more than sixty days from the date of the advertisement; and if the bids are not accepted by said board of Commissioners for the performance of all the work required, they shall immediately re-advertise as before, for other bids for the performance of such work as they may not have accepted bids for, and shall continue so to advertise, until they shall have accepted bids for the entire work to be performed. Upon the acceptance of any bid, the board shall immediately proceed to let a contract or contracts in accordance therewith, for the erection of said building; and may let one contract for the furnishing of all materials, and the erection, completion and furnishing of said buildings, complete and ready for use; or may let several and distinct contracts for furnishing the several classes and kinds of materials, and for the performance of the several classes and kinds of labor necessary, as they may deem for the best interests of the county: And the board shall require of all contractors <sup>Bond of contractors.</sup> a good and sufficient bond, with sufficient sureties to secure the faithful performance of their contracts, and shall reserve at least thirty per cent. of the amount of any and all contracts, and shall not pay the same to the contractor or contractors until such contract or contracts are completed in all respects according to agreement: And no member of said board shall, during his term of office, be interested in any contract in relation to said building.

SEC. 5. For the payment of the principal and interest <sup>Payment of bonds and interest.</sup> of the bonds issued under this act, the board of County Commissioners of said county shall, at the time of their levy of other county taxes, include therein a levy of sufficient tax upon all the taxable property in said county, to pay the interest and such part of the principal of said bonds, if any, as will, according to the terms thereof, become due during the ensuing year, after making all due allowances for delinquencies and the cost of collecting the same, and after deducting any moneys on hand subject to be so applied; and such tax shall be known as the Court House Bond Tax, and shall be collected and paid into the county treasury as other county taxes are collected and paid, and shall constitute a separate fund to be known as the Court House Construction Fund; and shall not be diverted or used on any pretense, or for any purpose except as above provided: And for the payment of the principal and interest of said bonds accord-

ing to the terms thereof, all the taxable property of said county is hereby solemnly and irrevocably pledged.

County  
Treasurer.

SEC. 6. The County Treasurer shall have the custody of all the funds realized from the sale of said bonds, and shall pay the same out on the written order of said board of County Commissioners, or a majority thereof, taking the receipt in every case of the person in whose favor said order is drawn, which receipt and order shall be his voucher for money so paid out; and said board of County Commissioners shall exact of said county treasurer a separate bond in such sum as they may deem proper, on behalf of said Ada County, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this act, and the faithful accounting for the money deposited with him, and realized from the sale of bonds as herein provided for; and the Treasurer shall be allowed for all services required of him by this act, one per cent. upon all moneys deposited with him and realized from the sale of said bonds.

Fees.

Expenses.

SEC. 7. All expenses incurred by said board of County Commissioners in carrying out the provisions and intentions of this act, shall be paid out of the County Treasury, as other current expenses of Ada County are paid.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved February 9, 1881.

## ADA COUNTY PROBATE JUDGE.

### AN ACT

FIXING THE SALARY OF THE PROBATE JUDGE OF ADA COUNTY, AND PROVIDING FOR THE PAYMENT OF THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Salary.

SECTION 1. That the Probate Judge of Ada County shall have and be paid a salary of six hundred dollars for the year A. D. 1881; and thereafter, six hundred dollars per annum, in addition to the fees now allowed by law:



*Provided*, the Probate Judge of said Ada County shall receive no other compensation for any services rendered for said Ada County.

SEC. 2. That such salary shall be allowed by the board of County Commissioners of said county, and paid quarterly out of the current expense and redemption fund of said Ada County. Commissioners to allow.

SEC. 3. This act to be in force from and after its passage, and approval by the Governor.

Approved February 10, 1881.

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## SCHOOL SUPERINTENDENT OF ADA COUNTY.

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### AN ACT

DEFINING THE DUTY AND POWER OF THE COUNTY  
SCHOOL SUPERINTENDENT OF ADA COUNTY

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the County Superintendent of Schools of Ada County be and he is hereby empowered to re-apportion to the several school districts of said county any and all money remaining in the treasury of said county on the first day of March, eighteen hundred and eighty-one, to the credit of any school district in said county which have failed to comply with the provisions of the school law for one year or more, previous to March 1st, eighteen hundred and eighty-one. Reapportionment of money among school districts.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## SPECIAL TAX IN ALTURAS COUNTY.

### AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO AUTHORIZE THE COMMISSIONERS OF ALTURAS COUNTY TO LEVY AND COLLECT A SPECIAL TAX FOR THE PURCHASE OF FUEL, LIGHTS AND STATIONERY." APPROVED JANUARY 13, A. D. 1871.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That an act entitled "An Act to authorize the Commissioners of Alturas County to levy and collect a special tax for the purchase of fuel, lights, and stationery," approved January 13th, A. D. 1871, be and the same is hereby repealed.

SEC. 2. This act to take effect and be in force from and after its approval by the Governor.

Approved December 30, 1880.

## ALTURAS COUNTY—BRANCH COUNTY JAILS.

### AN ACT

TO PROVIDE FOR BRANCH COUNTY JAILS IN ALTURAS COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The board of County Commissioners of Alturas County, are hereby empowered to establish a branch county jail in any town or place in said county;

How to be  
established.

*Provided*, that the town or citizens of the place where <sup>Same.</sup> such branch jail is proposed to be established, shall pay such part of the expense of construction as may be required by the board of Commissioners. And it shall be competent for the board to order the part chargeable to the county to be paid out of the general fund of the said county.

SEC. 2. The board shall make any order or regulation that they may deem advisable as to the size <sup>Size and cost.</sup> and cost of such branch jail; and the same shall be the property of the county.

SEC. 3. Any person liable to imprisonment in the county jail of said county may be confined in the near- <sup>Persons confined in.</sup> est jail; *Provided*, that any person so imprisoned in any branch jail, who has been held to answer before the grand jury, shall be removed to the jail at the county seat at least fifteen days before the next term of the District Court, unless so committed within said fifteen days, in which case he shall be so removed at once.

SEC. 4. The Sheriff and his deputies at the town or precinct wherein such branch jail is situated, or in their absence the constable of the precinct shall have the care and custody of the jail, and the charge of the pris- <sup>Care and custody.</sup> oners therein confined, and the board shall fix the rate of charges for maintaining, attending and guarding such prisoners; *Provided*, such charges shall in no case exceed the rate allowed at the jail at the county seat.

SEC. 5. Prisoners in the branch jails shall be under <sup>Discipline.</sup> the same rules and discipline as those confined in the jail at the county seat.

SEC. 6. The branch jail already established and <sup>Jail at Bellevue.</sup> erected at Bellevue in said county, is hereby legalized, and the provisions of this act shall apply thereto.

SEC. 7. This act to be in force from and after its passage.

Approved January 22, 1881.

## ALTURAS COUNTY—PROBATE JUDGE.

### AN ACT

TO AUTHORIZE THE COUNTY COMMISSIONERS OF ALTURAS COUNTY TO GRANT A SALARY TO THE PROBATE JUDGE OF SAID COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

County Commissioners authorized to pay a salary.

SECTION 1. The board of County Commissioners of Alturas County, are hereby authorized and directed, in addition to the fees allowed by law, to pay to the Probate Judge of said county a salary, not exceeding five hundred dollars per annum, payable quarterly out of the Current Expense and Redemption Fund of said county, and to be audited and allowed as other claims against the county are audited and allowed.

SEC. 2. This act shall take effect and be in force, from and after its passage.

Approved February 4, 1881.

## ALTURAS COUNTY—TREASURER.

### AN ACT

DEFINING THE DUTIES OF THE TREASURER OF ALTURAS COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Treasurer to give notice of redemption of warrants.

SECTION 1. The Treasurer of the County of Alturas, in this Territory, so soon as there shall be sufficient funds in the treasury of the county to redeem the orders or warrants drawing interest, the treasurer shall give

notice in some newspaper in his county, or if no news- Same.  
paper be printed in his county, then in some newspaper  
published at the capital of the Territory, and by written  
or printed notices, posted upon the court house door,  
stating therein that he is ready to redeem said orders or  
warrants; and from the date of such notice said orders  
or warrants shall cease to bear interest.

SEC. 2. Said notice shall give the number, date, Notice what to  
name of payee, on what fund drawn and payable, date contain.  
of registration, and amount of such warrant or warrants;  
*Provided*, that the expense of publication shall be al-  
lowed and audited as other accounts are allowed and  
audited against said county, to be paid out of the "Cur- Expense of  
rent Expense and Redemption Fund" of said county. publication,  
how paid.

SEC. 3. If any county treasurer of said county of  
Alturas, or his deputy, shall willfully neglect or refuse to Penalty for  
perform any of the duties enjoined on him by the neglect of  
provisions of this act, he shall be guilty of a mis- duty.  
demeanor in office, and on conviction thereof, shall be  
punished by a fine not less than two hundred dollars nor  
more than one thousand dollars, or by imprisonment in  
the county jail not more than one year, or by both such  
fine and imprisonment, and shall be forthwith removed  
from office.

SEC. 4. This act shall take effect, and be in force  
from and after its passage.

Approved February 1, 1881.

## ALTURAS COUNTY—AUDITOR TO ISSUE NEW WARRANTS IN LIEU OF CERTAIN OLD ONES.

### AN ACT

AUTHORIZING THE AUDITOR OF THE COUNTY OF ALTURAS  
TO ISSUE NEW WARRANTS IN LIEU OF CERTAIN  
OLD ONES.

*Be it enacted by the Legislative Assembly of the Terri-  
tory of Idaho, as follows:*

SECTION 1. The Auditor of Alturas County is hereby  
directed and required to issue new county warrants of

When auditor required to issue new warrants. said county in lieu of the outstanding warrants upon the Alturas County court house and county building fund, whenever such outstanding warrants shall be presented and surrendered to him for that purpose. Such new warrants shall be issued in the name of the person so presenting and surrendering the old warrants; shall be dated the day they are so issued, and shall be issued in the sum of two hundred dollars each, and such fractional portion of said sum as shall be necessary to equal the principal due upon the warrant or warrants, surrendered by any person; they shall equal, but not exceed, in the aggregate, the original sum or face value of the warrants in lieu of which they are issued, and shall specify that interest at the rate of ten per cent. per annum is to be paid upon the principal thereof, from the date of the old warrant upon which they are issued. They shall be numbered consecutively, beginning with the No. 1; be drawn upon said fund, and be registered in the same order, and be due and payable at the same time and in the same manner as the old warrants in lieu of which they are issued.

In whose name issued.

Date.

Denomination.

Interest.

How numbered.

Form. SEC. 2. Such new county warrants shall be substantially in the following form:  
No. ....

County Auditor's Office,  
Rocky Bar, Idaho Territory,  
.....188.

The Treasurer of Alturas County, Idaho Territory, will pay to.....or bearer, the sum of.....dollars, with interest on that sum at the rate of ten per cent. per annum from (date of old warrant) out of the Alturas County court house and county building fund, issued under act of the Legislative Assembly of Idaho Territory. Approved.....1881 upon surrendered warrant No. ....

.....  
Auditor of Alturas County.

Blanks. SEC. 3. The said auditor shall cause suitable blanks for such new warrants to be printed, and the expense thereof shall be audited and allowed by the commissioners of said county.

How paid for.

Disposal of old warrants re-deemed. SEC. 4. Said auditor shall write the words, "Redeemed by issuance of new warrants," across the face of each warrant surrendered to him, and deliver the same to the county treasurer, who shall make the same entry in the registry thereof; and at the meeting of the board of commissioners he shall deliver the same to said board,

who after examining the same, and the registry thereof, <sup>same</sup> shall destroy them by burning and make an entry of the fact in their record.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

## COUNTY SEAT OF ALTURAS COUNTY,

### AN ACT

TO PROVIDE FOR THE RELOCATION OF THE COUNTY SEAT OF ALTURAS COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. A special election shall be held in the <sup>Election.</sup> County of Alturas on the second Monday in September, A. D. eighteen hundred and eighty-one (1881); which special election shall be conducted in the manner, and be governed by the laws relating to general elections.

SEC. 2. At said special election the question of the permanent location of the county seat of Alturas County shall be submitted to, and be voted upon by the qualified voters therein. The words "For County Seat" shall be written or printed on the ballot, and the town or place desired by the voter shall be written or printed opposite or under the words above mentioned and required. <sup>Location of county seat.</sup>

SEC. 3. In canvassing the vote on the location of the county seat, ballots shall not be rejected because of any error in orthography or informality therein, if it can be clearly ascertained from the ballot what was intended by the voter; but where two or more ballots are folded together, they shall not be counted, and upon the canvass of the vote, by the board of County Commissioners, the town or place receiving the highest number of votes shall be, and is hereby established and confirmed as the permanent county seat of Alturas County. In case no choice is made at said special election, the question shall be again submitted at the next general election thereafter. <sup>Informality in ballots.</sup> <sup>Folded ballots.</sup> <sup>Case of no choice being made.</sup>

SEC. 4. The County Commissioners of said county



Notice of election. shall cause notice to be posted in the manner provided in the general election laws of this Territory. They shall also cause suitable poll books and returns to be prepared and furnished to the judges of election of the several precincts in said county.

Poll books. They shall appoint judges of election at their regular session last preceding the special election herein provided for. And within ten days after said election they shall act as a board of canvassers, and declare the result of said special election, and, if it shall be ascertained that any town or place has received a plurality of all the votes cast, such town or place is hereby declared to be the legally established county seat of Alturas County.

Judges of election. Board of canvassers. SEC. 5. In case it shall be ascertained by said canvass of votes that the county seat is removed from Rocky Bar to any other town or place it shall be the duty of the County Commissioners to cause the archives, records and funds of said county to be removed to the town or place chosen, within thirty days after the result of said special election shall have been ascertained. They shall have power to rent, or otherwise secure suitable buildings or rooms for the use of the county officers, and for the preservation of the records, archives and moneys of said county.

Removal of archives, etc.

Buildings for county use.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

## ALTURAS COUNTY—SALARIES AND FEES OF CERTAIN OFFICERS.

### AN ACT

REGULATING THE SALARIES AND FEES OF CERTAIN OFFICERS OF ALTURAS COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Sheriff's salary. SECTION 1. The Sheriff of Alturas county shall receive a salary of fourteen hundred dollars per annum, to be paid quarterly out of the county treasury, for all services to be by him rendered or performed for said county; he

shall also be allowed the sum of one dollar and fifty cents per day for each prisoner confined in the county jail, as remuneration in full for the board of such prisoner; he shall also be allowed a jailor, for whose services he shall receive the sum of three dollars per day, for each day a prisoner or prisoners are confined in the county jail; and he shall receive no other compensation for services rendered Alturas County.

Keeping of  
prisoners.

Jailor.

SEC. 2. The county auditor shall receive a salary of seven hundred dollars per annum, payable quarterly out of the county treasury, in full for all services to be by him rendered to and for said county of Alturas as auditor or recorder, and clerk of board of County Commissioners; *Provided*, that for any services rendered the Territory, he may receive such compensation as may be allowed by law.

Auditor salary.

SEC. 3. The County Treasurer of said county shall receive a salary of four hundred dollars per annum, payable quarterly out of the county treasury, for all services to be rendered or performed by him for said county; *Provided*, that for any services rendered the Territory, he shall receive such fees as may be allowed by law.

Treasurer's salary.

SEC. 4. Each County Commissioner of said county shall receive a salary of two hundred dollars per annum, to be paid quarterly out of the county treasury; and he may also receive the further sum of forty cents per mile for traveling from his place of residence to the county seat to attend any regular meeting of the board, to be computed one way only, and they shall not receive any other compensation for their services. Before any commissioner shall receive, or be entitled to receive, any compensation from said county, he shall take the oath prescribed by law.

Commissioners' salary.

Mileage.

SEC. 5. The Assessor shall be allowed such fees as are provided by the General Revenue Act of this Territory, and he shall be allowed to retain his percentage from the moneys in his hands at each monthly settlement with the county auditor; *Provided*, that for any services rendered the Territory, he may receive such compensation as may be allowed by law.

Assessor's fees.

SEC. 6. The several salaries allowed under the provisions of this act, shall be allowed and audited as other claims against the county are allowed and audited; and no officer of said county, or other person (the assessor above excepted), shall hold or reserve out of any moneys in his hands, or belonging to said county, any salary,

Salaries, how  
allowed and  
paid.

Same.

fee, percentage, or other amount; but all such moneys shall be paid in full into the county treasury.

SEC. 7. That an act entitled "An Act regulating the salaries and fees of certain officers of Alturas County," approved January 14, 1875, be and the same is hereby repealed.

SEC. 8. This act shall take effect, and be in force, from and after the 1st day of April, A. D. 1881.

Approved February 10, 1881.

## WARRANTS IN ALTURAS COUNTY.

### AN ACT

TO AUTHORIZE THE AUDITOR OF ALTURAS COUNTY TO  
ISSUE WARRANTS ON THE CURRENT EXPENSE AND  
REDEMPTION FUND IN LIEU OF CERTAIN OLD ONES  
DRAWN UPON THE ROAD FUND.

*Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:*

Issue of new  
warrants in  
lieu of old  
ones.

SECTION 1. The Auditor of Alturas County is hereby directed and required to issue new county warrants of said county, against the current expense and redemption fund of said county, in lieu of the outstanding warrants heretofore drawn upon the road funds of any district in said county.

How issued.

Amount.

Whenever such outstanding warrants shall be presented and surrendered to him for that purpose, such new warrants shall be issued in the name of the person so presenting and surrendering the old warrants; shall be dated the day they are so issued, and shall be numbered in their order, and shall be for the amount of the principal due on said outstanding warrants, without including interest on said warrants.

SEC. 2. Said auditor shall write the words, "Redeemed by issuance of new warrants upon the current expense and redemption fund," across the face of each warrant surrendered to him, and deliver the same to the county treasurer, who shall make the same entry in the registry thereof, and at the next meeting of the board

of Commissioners, he shall deliver the same to said board, who, after examining the same, and the registry thereof, shall destroy them by burning, and make an entry of the fact in their record. <sup>Disposal of old warrants.</sup>

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 11, 1881.

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## BOUNDARY BETWEEN LEMHI AND ALTURAS COUNTIES.

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### AN ACT

BETTER TO DEFINE THE BOUNDARY LINE BETWEEN LEMHI AND ALTURAS COUNTIES.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the boundary line between the countie <sup>Boundary.</sup> of Lemhi and Alturas be and the same hereby is defined as follows : Beginning at the summit of the Butte on the easterly side of Birch Creek, at the place known as the "Upper" or "First Crossing" of Birch Creek, about two miles below the source thereof, and running thence from said initial point due east to the western line of Oneida County, and due west from said initial point to the eastern line of Custer County.

SEC. 2. This act shall take effect and be in force from and after April 1st, 1881.

Approved February 9, 1881.

## BEAR LAKE COUNTY—STOCK DISTRICTS.

### AN ACT

TO PROVIDE FOR STOCK DISTRICTS IN THE COUNTY OF BEAR LAKE, IDAHO TERRITORY, FOR CREATING STOCK BOARDS FOR SUCH DISTRICTS, AND FOR THE ROUND UP OF CATTLE.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Commissioners to create districts.

SECTION 1. The board of County Commissioners of Bear Lake County, Territory of Idaho, shall at their regular meeting in April, 1881, divide said county into stock districts of not more than twelve, and number the same. They shall have due regard to natural boundaries, and shall take into consideration the convenience of the resident stock-owners; and shall at the same time (and annually thereafter at their regular meeting in April), appoint three *bona fide* resident stock-owners in each stock district (naming one as superintendent and one as clerk), who shall constitute the stock board of such district. Said stock boards shall hold their office for one year, and until their successors are appointed and qualified. Notices of appointment shall be forwarded by mail, or delivered in person, or by proxy, to each member of the stock board of every stock district by the clerk to the clerk of the Board of Commissioners, within two days from the date of such appointment.

Stock board.

Term of office.

Notice of appointment.

Oath of board.

SEC. 2. The members of the several stock boards who may be appointed in accordance with the provisions of this act, shall within ten days after receiving notice thereof, and before entering upon their duties, appear before some officer by law authorized to administer an oath, and take and subscribe to the oath of office, which oath shall be substantially in the following form:

I, A. B., do solemnly swear (or affirm), that I will

faithfully, fairly and impartially discharge the duties re- Same.  
quired of me as a member of the stock board of Stock  
District No. . . according to law, and to the best of my  
ability. Said oath shall be attached to the certificate of  
appointment, and certified to by the officer administer-  
ing the same, who shall file a copy thereof with the  
county recorder.

SEC. 3. The superintendent of each stock board shall Superinten-  
dent.  
preside at all meetings of the board, and at all public  
meetings of the district, and shall, with the aid and as-  
sistance of the other members of the board, superintend  
the general annual round up of cattle and horses of the  
district. He shall have the care and custody of all un-  
claimed stock, and shall have power to call a meeting  
of the board as occasion may require.

SEC. 4. The stock board of each stock district shall Time of an-  
nual round up.  
fix the day and place for the commencement of the gen-  
eral annual round up, within the time prescribed by this  
act, and shall give three days notice of the same, by post-  
ing notices thereof in three of the most public places  
within their respective districts; *Provided*, that when  
two or more stock districts join, the general annual  
roundup shall not take place in more than one district  
at the same time, but one shall immediately follow the  
other, in the order that may be agreed upon by the stock  
boards of such adjacent stock districts.

SEC. 5. Each and every stock board that may be  
organized under the provisions of this act, shall procure  
a book of record, and shall adopt and procure a district Record, brand  
and counter-  
brand.  
stock brand and counter brand, and the cost thereof shall  
be a charge against the county; which charge or account  
shall be subscribed and sworn to by the superintendent  
of the stock board, and on presentation shall be audited  
and allowed by the County Commissioners, and be paid out  
of the general county fund. All district stock brands  
and counter brands shall remain in the care and custody  
of the superintendent; they shall only be used in the  
manner hereinafter described, and shall be recorded in  
the county recorder's office, and the recorder shall  
receive a fee of one dollar for recording the brand and  
counter brand of each stock district, to be paid out of the  
county treasury.

SEC. 6. The clerk of the stock board of each stock dis- Duties of clerk.  
trict shall keep a correct description of all unclaimed stock,  
together with their marks and brands (should they have  
any), and shall record the same in a book of records,  
kept for that purpose. And it shall be his duty, and he

Same.

is hereby required, within six days after the close of the general annual round up in his district, to transmit to the clerks of the several stock boards within his county, a brief, but correct, description of all unclaimed stock, together with their marks and brands (should they have any), and upon receipt thereof, the same shall be recorded, and kept by each of said clerks for the inspection of the public. For recording the description of marks and brands, and making copies thereof, as in this section required, the clerk shall receive a fee of fifty cents for each unclaimed animal, but no fee for recording shall be allowed any clerk to whom such description is sent; and the clerk of each stock board is hereby authorized to administer oaths and take evidence and affidavits, on all cases touching the ownership of cattle and horses, and also to administer the oath of office to the members of the incoming stock board.

Compensation of superintendent.

SEC. 7. The superintendent of each stock district shall receive one dollar and fifty cents per month, or the proportion thereof, for such time as he may have the custody of such stock, for the care and feeding of each animal placed in his charge by the stock board, and the stock board shall receive seventy-five cents for each unclaimed animal they may brand and counter brand according to the provisions of this act. The foregoing fees, together with the fees of the clerk as provided for in section six of this act, shall become a lien on said stock, and shall be paid by the owner; And the Superintendent, clerk and stock board shall receive no additional compensation for any services required of them by this act.

Fees.

Time of round up.

SEC. 8. In each and every stock district created under the provisions of this act, there shall be annually one general round up for gathering together of cattle and horses, between the first day of October and the first day of February. Each and every resident stock-owner or owners, or his or their agent, who may own or have in his charge fifteen head of cattle or horses, or said number including both, or more than that number, shall be obliged and are hereby required to attend and assist at every general round up of cattle (running at large) in the stock district in which they may reside, and a majority of the resident stock-owners of each stock district may make and adopt such local laws, rules and regulations, not in conflict with the provisions of this act, as they may deem necessary for their government and guidance.

Stock owners to attend.

Laws of board.

SEC. 9. When the cattle of any stock district shall be



gathered together in accordance with this act, and the local regulations of such district, any stock-owner or owners, or his or their agent, shall have the privilege of examining to their satisfaction the cattle belonging to him or them; and the stock board shall take charge of all unclaimed stock, and shall place the same in the custody of the superintendent. All unbranded stock over one year old shall be considered as unclaimed stock, and shall be subject to proof of ownership; *Provided*, that after the first general round up in 1881, all stock-owners shall forfeit their right of ownership to all unbranded stock or cattle, over one year old, running at large.

SEC. 10. At the close of the annual general round up in each stock district, the stock board shall immediately proceed to brand all unclaimed stock with the district stock-brand, and shall place them in charge of the superintendent, who shall carefully herd the same, subject to the inspection and proof of all claimants of said unclaimed stock, for the term of thirty days; and upon any claimant proving the ownership of any of such unclaimed stock, and paying the fees due the superintendent, clerk and stock board, and the expense of publication of notice, as in this act provided, then the stock board shall counter brand and deliver said stock to the rightful owner or his agent; *Provided*, that said superintendent shall within one week after the general round up, give public notice by publication, once a week in any newspaper published in said county, which notice shall be published three successive weeks, and by posting such notice in three public places in the stock district, at least twenty days before the sale provided for in the next section; and if there be no newspaper published in the county, then such notice shall be by such posting. Said notices shall contain a description of said stock, with their marks and brands, and direct the owners of said unclaimed animals to appear and prove ownership, previous to or on the day of sale.

SEC. 11. At the expiration of thirty days, all stock that may remain unclaimed in charge of the superintendent, and all stock the owner of which has not appeared and proven his ownership, and paid the charges due thereon, shall be sold to the highest bidder for cash. The proceeds of such sale shall first be applied by the superintendent to the payment of the fees, costs and charges, and the residue shall be paid into the county treasury. The superintendent shall, at the time of making such payment, file with the county treasurer a sworn state-

Same.

ment, showing the number of stock sold, the gross proceeds of such sale, and the amounts paid for fees, costs and charges, and the amount paid into the county treasury, which payment shall be made, and statement filed within ten days from the date of such sale, and if the owner or claimant of any unclaimed animal, sold under the provisions of this act, shall within the period of six months after such sale, make satisfactory proof of ownership to the County Commissioners, the said Commissioners shall thereupon order a warrant to be drawn upon the Treasurer for the money paid to him upon the sale of such unclaimed animals. In case such proof is not made within the said six months, the said money shall be forfeited to the county, and shall be applied to the county school fund.

Duty of stock boards.

SEC. 12. All stock boards are hereby required, and it is made their duty to attend the general annual round up or gathering of cattle in their respective stock districts, and should any dispute arise respecting the ownership of any cattle, it shall be the duty of the stock board to decide on such dispute; *Provided*, that where one of said board may be a party to any dispute, then the other two members of the board shall select some disinterested resident stock owner of such district, to assist at the settlement of such dispute; *Provided, further*, that should any dispute arise touching the ownership of any cattle between two members of any stock board, then they shall each of them select some disinterested resident stock-owner, to act with the other members of the board, in the settlement of such dispute. Any person who may be a party to any dispute touching the ownership of stock, may appeal from the decision of the stock board to any justice of peace in the county; *Provided*, such appeal be taken within two days after the judgment or decision of the stock board may have been rendered.

Removal of stock from range.

SEC. 13. Whenever the owner, agent of the owner, or parties in charge of any cattle, shall desire to remove such cattle from the range on which they have been running for the space of ten days or more, to another range ten miles or more distant, they are hereby required to give three days' notice to the stock owners having cattle on such range, before such removal, in order that such stock owners may separate their stock; and the said owner, agent, or parties in possession, shall be further required to gather or round up their cattle for that purpose.

SEC. 14. Any owner, agent, or person in possession

of cattle, failing or refusing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, may be fined in any sum not less than five dollars, and not more than one hundred dollars, and shall be liable to any party aggrieved in damages. <sup>Penalty.</sup>

SEC. 15. Any person or persons who may be convicted of having used a district stock brand or counter brand, without authority, and in violation of law, or of having used a counterfeit brand or counter brand of the same, shall be fined in a sum of not less than twenty-five dollars and not more than one hundred dollars, and shall be imprisoned in the county jail for a term not exceeding thirty days, and all justices of the peace shall have jurisdiction of such offenses. <sup>Misuse of brands, penalty for.</sup>

SEC. 16. Should complaint be brought against any member of a stock board, for dereliction of duty, the same being sustained he shall be considered as guilty of a misdemeanor, and shall be liable to prosecution for the same. <sup>Penalty for neglect of duty.</sup>

SEC. 17. All fines arising under the provisions of this act, shall be paid into the county treasury for the benefit of the school fund. <sup>Disposal of fines.</sup>

SEC. 18. Should a vacancy occur in any stock board by death, resignation, or otherwise, the Board of Commissioners shall at their first meeting thereafter fill the same by appointment. <sup>Vacancy, how filled.</sup>

SEC. 19. This act shall take effect and be in force from and after its passage.

Approved January 28, 1881.

## SHEEP IN BEAR LAKE COUNTY.

### AN ACT

TO RESTRAIN THE HERDING OF SHEEP IN BEAR LAKE COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. It shall not be lawful for any person or persons, owning or having charge of any sheep within the county of Bear Lake, to herd the same, or permit <sup>Herdling of sheep when unlawful.</sup>

Same.

them to be herded, between the first day of April and the fifteenth day of October of each year, within two (2) miles of any town, or within the same distance of any dairy or cheese factory having or using fifty cows or more for dairy purposes, except on the possessory claim of the owner or owners of such sheep.

Liability to fine.

SEC. 2. The owner or owners, or the agent of such owner or owners of sheep, violating section first of this act, on complaint of any party or parties, and on conviction thereof, before any justice of the peace in the precinct in which either of the parties may reside, shall be liable to a fine of not less than five and not more than twenty dollars, and costs of suit.

Fines collected.

SEC. 3. All fines imposed and collected under the provisions of this act shall go into the county treasury, and become a part of the school fund: *Provided*, that this act shall not be applied to herds of sheep being driven with due diligence through the county.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 28, 1881.

## CONTINGENT FUND IN BEAR LAKE COUNTY.

### AN ACT

CREATING A CONTINGENT FUND FOR THE COUNTY OF BEAR LAKE, IN IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Expenses of county officers.

SECTION 1. That there be set apart from the General Fund of Bear Lake County the sum of forty cents on each dollar, for the purpose of paying salaries, fees and expenses of the county officers of Bear Lake County, and all other incidental or necessary expenses not otherwise provided by law.

SEC. 2. This act to take effect and be in force from and after its approval by the Governor.

Passed both Houses of the Legislative Assembly and became a law, notwithstanding the Governor's objections, February 9th, 1881.

## DOGS IN BEAR LAKE COUNTY.

### AN ACT

TO TAX THE OWNERS OF DOGS IN BEAR LAKE COUNTY, IDAHO TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. An annual tax for school purposes is hereby levied on each and every dog, over the age of six months, kept in the County of Bear Lake, in the Territory of Idaho.

SEC. 2. It shall be the duty of the board of County Commissioners of Bear Lake County to furnish the Assessor of such county with blank receipt books with stubs for dog tax under this act. Which receipts shall be numbered and charged to the Assessor; *Provided further*, that assessors shall use no other receipt than those herein mentioned. Dog tax receipts.

SEC. 3. It shall be the duty of the assessor of the County of Bear Lake to assess each dog over six months old in said county, and collect from their owner or owners two dollars per head each. In case any owner or owners of a dog or dogs refuse to pay the tax so assessed, it shall be the duty of the assessor to kill, or to have killed or destroyed, any dog or dogs whose owner or owners refuse to pay taxes on the same, and also to kill or destroy all dogs for whom he can find no owner. Tax on dogs.  
Refusal to pay dog tax.

SEC. 4. It shall be the duty of the assessor of the County of Bear Lake, when any person pays him the tax on any dog assessed under this act, to give said person a receipt, showing that the tax has been paid, with a description of said dog or dogs as near as may be, and said receipt shall be evidence that the tax on the dog described therein has been paid for that year, and such dog shall not be killed, or assessed again that year, under this act. Receipt evidence of tax paid.

SEC. 5. It shall be the duty of the assessor of Bear Lake County to make out a quarterly report, under oath, Report of assessor.

Fees of as-  
essor.

showing how many dogs he has assessed and collected on under this act, and also, showing how many dogs he has killed or caused to be killed or destroyed for failure to pay tax. He shall be allowed to retain ten per cent. of all taxes collected under this act; *Provided further*, that he shall be allowed to retain fifty cents for each and every dog killed or destroyed by him or by his authority under this act, the balance he shall pay over to the county treasurer for the credit of the school fund, taking his receipt therefor, and shall file said receipt, together with his quarterly report, with the auditor of the county, and he shall at the same time account for all receipts issued to him.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved February 10, 1881.

## COUNTY COMMISSIONERS OF BOISE COUNTY.

### AN ACT

TO EXTEND THE POWERS OF THE BOARD OF COUNTY COMMISSIONERS OF BOISE COUNTY, RELATING TO ROAD CONTRACTS.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Powers relat-  
ing to road  
contracts.

SECTION 1. The Board of County Commissioners of Boise county, upon learning that any of the public roads are not repaired and kept in order by anyone contracting to do so, shall have the power, and shall cause the same to be done by placing labor thereon; and such expense shall be retained from any amount that may be due him on his contract, and should that be insufficient or nothing be due thereon, the deficiency, or whole amount (as the case may be), shall be collected from his bondsmen, as other liabilities.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

SEC. 3. This act shall take effect, and be in force, from and after the date of its passage.

Approved January 6, 1881.

## CASSIA COUNTY—EASTERN BOUNDARY.

### AN ACT

TO BETTER DEFINE THE EASTERN BOUNDARY OF THE  
COUNTY OF CASSIA.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That section one of an act entitled "An Act creating and organizing the County of Cassia," approved February 20, 1879, is hereby amended by striking out the words "County of Owyhee" in said section, and inserting in lieu thereof the words "Territory of Idaho"; also amend said section by inserting after the words "one hundred and thirteen degrees," where they first occur in said section, the words, "west from Greenwich." Section amended.

SEC. 2. This act shall take effect, and be in force, from and after its passage.

Passed both houses of the Legislative Assembly and became a law, notwithstanding the Governor's objections, February 9, 1881.

## CONTINGENT FUND IN CASSIA COUNTY.

### AN ACT

TO CREATE A CONTINGENT FUND IN THE COUNTY OF  
CASSIA.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The board of County Commissioners of the County of Cassia are hereby authorized and empowered to set apart annually any sum not to exceed the sum Amount of fund.



of five hundred dollars, out of any money in the county general fund for contingent expenses.

Order on minutes.

SEC. 2. The board of County Commissioners of said county shall make an order upon the minutes of said board, setting apart such sum as they may deem sufficient for each year, not exceeding the sum mentioned in section one of this act.

Surplus.

SEC. 3. The balance in said contingent fund, if any there be at the end of each year shall be covered back into the county general fund of said county.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 25, 1881.

## CREATION OF CUSTER COUNTY.

### AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF CUSTER.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Boundaries.

SECTION 1. That all those portions of the counties of Lemhi, Alturas and whatsoever others, in this Territory, embraced and included within the following boundaries to wit: commencing at the confluence of the Pahsimeroi with the Salmon river, and running thence up the Pahsimeroi river to the mouth of Big Creek, thence up Big Creek, and on a line, from the head thereof, with the general course of said creek to the summit of the divide between the waters of the Pahsimeroi and Lemhi rivers, thence south-easterly on the summit of said divide to a point due west from the head waters of Little Lost river, thence due east to the head waters of said Little Lost river, thence down Little Lost river to the point where the trail leading to Pass Creek crosses said Little Lost river, thence in a direct line to the head of Pass Creek, thence down said Pass Creek to Big Lost river, thence along Big Lost River to the mouth of Antelope Creek, thence up Antelope Creek to the divide which separates its waters from those of Little Wood river, thence westerly along and upon the summit of the ridge of mountains dividing the head waters of the East Fork of the Salmon

river from the waters of the Little or Big Wood river, <sup>same.</sup> and continuing westerly on said divide between the East Fork of Salmon and Wood rivers, to the main Salmon river, thence along said Salmon river to the mouth of Fall Creek, a stream entering the Salmon river at a point about fifteen (15) miles northerly from Sawtooth City, thence up said Fall Creek to Pettit Lake in a right line to the mouth of the creek entering said lake at the west end thereof, thence up said last mentioned creek to the summit of the Sawtooth Mountains, thence northerly along the summit of the Sawtooth Mountains to the termination thereof, near what is known as the Cape Horn Cabin, thence from the end of the said Sawtooth Range, on a due west line, to the stream called Marsh Creek, and along and with Cape Horn Creek, to its entrance into the Middle Fork of the Salmon river, thence on and with the divide which separates the waters flowing into the Middle Fork of the Salmon from those flowing into the main Salmon through Stanley Basin, and along and upon the divide between the waters of Loon Creek and Deep Creek on the north, and the waters of Yankee Fork on the south, and following such divide easterly around the head of Panther Creek to the divide between Hat Creek and Ellis Creek, thence on the divide between Hat Creek and Ellis Creek in an easterly direction to the Salmon river, thence up the said Salmon river to the place of commencement, be and the same are hereby constituted into a county to be called the County of Custer, the same to be organized temporarily and permanently as hereinafter provided and directed.

SEC. 2. That James M. Shoup, of Challis, J. S. P. Robinson, of the place known as Custer City, and Enos Watson, of the place known as Bonanza City, are hereby appointed County Commissioners for said county of Custer, who shall hold their respective offices from the time of qualifying as such, until their successors are elected and shall qualify, as hereinafter provided by this act: *Provided*, that if a majority only of the Commissioners elected at the special election hereinafter mentioned appear and qualify at the first meeting of the Board of Commissioners elected thereat, then such majority shall enter upon the discharge of their duties, and may proceed at any time to file the place of the person so failing to appear and qualify.

SEC. 3. The Commissioners herein above appointed shall take the usual oath of office, and file the same with their clerk, and they, or a majority of them, shall enter

County commissioners appointed.

Commissioners to take oath.

Duties, when to commence.	upon the discharge of the duties of office and of the special duties herein prescribed on the first Monday in April in the year one thousand eight hundred and eighty-one.
Where to meet.	SEC. 4. Said Commissioners shall meet at Challis on the first Monday of April, A. D. 1881, and shall proceed to divide the county of Custer into proper and convenient election precincts and appoint the judges of election therein, for the special election hereinafter mentioned.
Precincts and judges.	
Special election when to be held.	SEC. 5. A special election shall be held in the said County of Custer, on the third Monday in June, A. D. 1881, for the election of all county officers required by law to be elected in the several counties of this Territory, including a Board of Commissioners for the same. Such special election shall be conducted in the manner, and be governed by the laws relating to general elections. The said above named Commissioners shall meet at Challis, on the tenth day after said election, and act as a board of canvassers, declare the result of said election (including the vote on the question of fixing the county seat of said county,) and cause certificates to issue as required by law. Said board shall cause due notice to be given of said special election, and shall cause the same to be published for a reasonable time in any newspaper which may then be printed in said county.
How conducted.	
Board of canvassers.	
Notice of special election.	
Commissioners elected, when and where to meet, etc.	SEC. 6. The Board of Commissioners above herein designated, shall hold a meeting at Challis, on the first Saturday in July, A. D. 1881, when the Commissioners elected at said special election shall appear and qualify, and enter upon the discharge of their official duties. Thereafter the County Commissioners of said county shall hold their meetings, regular and special, according to the general laws governing the same; <i>Provided</i> , that when the regular day for meeting shall occur on a day established as a holiday, then they shall meet on the day next after said holiday.
Meetings.	
County officers to appear and qualify.	SEC. 7. On the first day of the meeting of the Board of County Commissioners, elected under this act, or before the adjournment of the session for July, A. D. 1881, the officers elected for said County of Custer shall appear and file their bonds, and upon the approval thereof shall be sworn into office, and they and all other county and precinct officers shall continue to hold their respective offices until the first Monday in January, A. D. 1883, and until their successors are elected and qualified.
	SEC. 8. It shall be the duty of the County Commissioners herein designated, immediately upon organizing

their board, to proceed to the election or appointment of such *pro tempore* county officers for said County of Custer, as are provided for the other counties of this Territory; and also to appoint precinct officers in such parts of the said county as are not included in existing precincts; *Provided*, that the successors to such precinct officers shall be elected at the special election herein required; and, *provided further*, that the precinct officers elected at the general election held in the year 1880, in any part of said county, and who shall have qualified, shall be entitled to hold their respective places for the term for which they were chosen at said general election.

Commissioners to appoint *pro tempore* county and precinct officers.

SEC. 9. At the said special election herein provided for, the question of the permanent location of the county seat of the county hereby created, shall be submitted to, and be voted upon, by the qualified voters therein. The words, "For County Seat" shall be written or printed on the ballot, and the town or place desired by the voter shall be designated opposite or under the words above mentioned and required.

Location of county seat.

SEC. 10. In canvassing the vote on the location of the county seat, ballots shall not be rejected because of any error in orthography, or informality therein, if it can be clearly ascertained from the ballot what was intended by the voter; but where two or more ballots are folded together, they shall not be counted, and upon the canvass of the vote by the board of County Commissioners the town or place receiving the highest number of legal votes, shall and is hereby established as the permanent county seat of said Custer County. In case no choice is made at said election, the commissioners shall fix temporarily the county seat, and the question shall be again voted upon at the first general election thereafter.

Canvass of vote for county seat.

SEC. 11. From and after the temporary organization of said Custer County, the same shall be exclusively subject of the government therefor, herein provided, and exempt from the jurisdiction, interference or control of any officer of Lemhi County, or other county of this Territory; and all public offenses committed after the said temporary organization thereof, within the boundaries of said Custer County, and all persons charged with the commission thereof, shall be amenable to the process of said county, and shall be prosecuted and tried in the said County of Custer.

Government.

SEC. 12. The said County of Custer is hereby attached to, and made a part of the second district attorney district of this Territory.

Part of 2nd attorney district.

Delinquent  
taxes.

SEC. 13. All taxes heretofore levied upon real and personal property situated within the said described boundaries of Custer County, by the said County of Lemhi, and which remain delinquent and unpaid, may be collected, and the payment thereof enforced in the same manner as though this act had not been passed.

Transcripts of  
certain records  
of Alturas and  
Lemhi.

Effect of  
transcripts.

SEC. 14. The recorder of the County of Custer, who shall be hereafter elected, is hereby authorized to transcribe into proper books, which shall be procured for that purpose, of the description required by law, such parts of the records of the Counties of Lemhi and Alturas as relate to real or personal property situated within the county created and organized under this act, and the same when so transcribed, shall be of the same force and effect, as notice, and shall in all courts be received in like manner, and certified copies therefrom with like effect as evidence, as if the original record, or certified copies therefrom, were produced in said courts.

Warrants in  
favor of Alturas  
county.

Delivery of  
warrants.

SEC. 15. The county auditor to be elected under the provisions of this act, shall, as soon as practicable after entering upon the duties of his office, draw warrants of said Custer County in favor of the County of Alturas, in sums not exceeding five hundred (500) dollars each, bearing interest at ten (10) per cent. per annum, to the total amount of eight thousand (8,000) dollars, which amount is hereby ascertained and declared to be the just proportion of the existing debt of Alturas County, due from the said County of Custer, as a consideration for the appropriation of territory heretofore subject to the jurisdiction of the former county. Said warrants when drawn and properly registered, shall be delivered to the county auditor of Alturas County, or to such other officer, or person as may be authorized to receive and receipt for the same, by, or under the order, of the county commissioners of said County of Alturas.

Special tax  
levy of.

Sinking fund.

SEC. 16. The Board of County Commissioners of said County of Custer shall at the time of levying taxes for the year 1881, and annually thereafter, levy a special tax of twenty-five (25) cents on each one hundred (\$100) dollars of taxable property in said county, the proceeds of which shall be set apart as a sinking fund for the redemption of said warrants, so to be drawn in favor of the County of Alturas, and when the whole of said warrants, with the interest thereon, shall be paid from the proceeds of said special tax or otherwise. Said special tax shall be no longer levied, and any moneys thereafter remaining in said sinking fund, shall, by order of the

Board of County Commissioners, be transferred to the school fund of the said County of Custer; *Provided*, that when at any time the county auditor of said Custer County, shall notify the auditor of said Alturas County, that there are moneys in said sinking fund of his county for the redemption and payment of any warrant or warrants, so drawn and outstanding in favor of said County of Alturas, then interest on the warrants which the County of Custer is prepared to pay, and of which notice shall be given as above required shall cease; but the moneys applicable to the payment of such designated warrants shall not be used in the payment of any other of such warrants for one year after notification, and a failure on the part of the holders to present the same for payment.

Interest on  
warrants to  
cease.

SEC. 17. This act shall take and be in effect on and after the first day of April, in the year one thousand, eight hundred and eighty-one.

Approved January 8, 1881.

## CUSTER AND LEMHI COUNTIES—REPRESENTATION AND INDEBTEDNESS APPORTIONED.

### AN ACT

TO PROVIDE FOR READJUSTING AND APPORTIONING THE REPRESENTATION TO THE HOUSES OF THE LEGISLATIVE ASSEMBLY FROM THE COUNTIES OF LEMHI AND CUSTER, AND FOR OTHER PURPOSES.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That at the general election to be held in the year 1882, and thereafter until otherwise provided by law, the County of Lemhi and Custer shall elect jointly one member to the Council, and each of said counties severally shall elect one member to the House of Representatives.

Election joint  
councilman  
and representa-  
tives.

SEC. 2. In consideration of the grant of Territory made by the County of Lemhi to the County of Custer,

Custer county  
to pay part of  
debt of Lemhi  
county.

Amount of  
debt, how as-  
certained.

Custer to pay  
fifty per cent.

How to be  
paid.

Warrants, how  
paid.

under and by virtue of the provision of an act of the Legislative Assembly of Idaho Territory, entitled an "Act to create and organize the County of Custer." Approved Jan. 8, 1881, the County of Custer shall be liable for and assume and pay to the County of Lemhi fifty per cent. of the indebtedness of said County of Lemhi at the time said act shall take effect.

SEC. 3. The amount of said debt of Lemhi County to be so assumed and paid by Custer County, shall be ascertained as follows: The Auditor of Custer County shall, on or before the first day of May, A. D. 1881. ascertain from the reports of the auditor and treasurer of Lemhi County, or if such report be not complete, or be from any cause unsatisfactory, then from the books of said auditor and treasurer, the total amount of county warrants of said Lemhi County, drawn and outstanding, and shall report the same to the board of County Commissioners of Custer County. Therefrom, the total sum of such indebtedness, shall be deducted the amount of cash in the County Treasury of the net indebtedness so ascertained, the County of Custer shall be liable for and shall pay to the County of Lemhi fifty per cent. up on such adjustment. The auditor of Custer County shall thereupon draw his warrant in sums not exceeding five hundred dollars each, payable to the treasurer of Lemhi County, and not transferable, and he shall deliver the same to the Treasurer of Lemhi County, which said warrants shall draw interest at the rate of ten per cent per annum.

SEC. 4. The warrants of the County of Custer, which by section two are authorized and directed to be issued in favor of the County of Lemhi, shall be paid out of the sinking fund of said County of Custer in the order of their registry, and the provisions of section sixteen of the act entitled "An Act organizing the County of Custer," approved January 8, 1881, shall apply to all warrants drawn under and by virtue of the provisions of this act equally with those, which by said section and by said act are directed to be issued and paid to Alturas County; *Provided*, however, that the treasurer of said county shall not take up or pay any warrants drawn in favor of Lemhi County under and by virtue of the provisions of this act, until all warrants in favor of Alturas County, and the interest thereon, has been paid.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.



## PROBATE JUDGE OF CUSTER COUNTY.

### AN ACT

#### REGULATING THE SALARY OF THE PROBATE JUDGE OF CUSTER COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The Probate Judge of Custer county shall receive a salary of five hundred dollars per annum <sup>Salary of</sup> to be paid quarterly out of the general fund of said county, to be audited and allowed as other claims against said county are audited and allowed. And in addition to said salary he shall receive the same fees as Probate Judges and ex-officio clerks of the Probate Court are now allowed by law.

SEC. 2. This act shall be in force and take effect on and after April 1, 1881.

Approved January 25, 1881.

## WARRANTS IN IDAHO COUNTY.

### AN ACT

#### TO PROVIDE FOR THE PAYMENT OF CERTAIN OUTSTANDING WARRANTS AGAINST THE GENERAL ROAD FUND OF IDAHO COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The board of County Commissioners of Idaho County, are hereby authorized, empowered and directed to levy and cause to be collected in the same manner and at the same time, as are other per capita taxes, a special per capita tax of one dollar upon each inhabitant of said county liable to pay per capita taxes; <sup>Tax for road fund.</sup> the proceeds of said special per capita tax to be placed

by the county treasurer in a special fund, to be called the special road fund.

**Additional tax.** SEC. 2. The board of County Commissioners shall continue to levy and cause to be collected said special per capita tax until all the outstanding warrants against the road fund of said county are paid. And the county treasurer of said county is hereby directed to pay said road warrants, in the order in which they were issued, out of said special road fund; and whenever all of said outstanding road warrants are paid, the board of County Commissioners shall no longer levy or cause to be collected said special per capita tax, and it is hereby made unlawful for them to so do. And upon the payment of all of said outstanding road warrants, the treasurer of said county is authorized and directed to pay the balance remaining in said "special road fund," if any there be, into the general fund of said county, and thenceforth shall no longer keep said special road fund.

**Payment of warrants.**

**Disposal of surplus.**

SEC. 3. All acts and parts of acts so far as they conflict with the provisions of this act, shall not apply to Idaho County.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved January 28, 1881.

## PROBATE JUDGE OF IDAHO COUNTY.

### AN ACT

#### REGULATING THE SALARY AND FEES OF THE PROBATE JUDGE OF IDAHO COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

**Salary.** SECTION 1. The Probate Judge of Idaho County shall receive a salary of three hundred dollars per annum, to be paid quarterly out of the general fund of said county, to be audited and allowed as other claims against said county are audited and allowed.

**Fees.** SEC. 2. Nothing in this act shall be so construed as to prohibit the Probate Judge of said county from receiving the same fees as Probate Judge and ex officio clerk of the Probate Court as are received by the Probate Judges of other counties of this Territory.

SEC. 3. All acts and parts of acts in conflict with this act, so far as relates to Idaho County, are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

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## RECORDS IN LEMHI COUNTY.

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### AN ACT.

#### LEGALIZING CERTAIN RECORDS IN LEMHI COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That all conveyances, mortgages, transfers, claims, liens, notices, of mining locations, and instruments of every kind or nature relating to real or personal property, situated at the time of such record within those portions of Lemhi and Alturas Counties embraced within the territory included within limits of the County of Custer, and recorded in the County of Lemhi prior to the taking effect of the act entitled "An act to create and organize the County of Custer," approved January 8, 1881, are hereby legalized and declared as valid to all intents and purposes as if the same had been duly recorded in the proper county. Legalizing records.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

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## COUNTY COMMISSIONERS OF LEMHI COUNTY.

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### AN ACT

#### TO FILL VACANCIES IN THE BOARD OF COUNTY COMMISSIONERS OF LEMHI COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That J. P. Clough and David McNutt

Appointment  
to fill vacan-  
cies.

are hereby appointed members of the board of County Commissioners in and for Lemhi county to fill vacancies in said board, caused by the appointment of J. S. P. Robinson and James M. Shoup as County Commissioners of Custer county.

Time of assum-  
ing office.

SEC. 2. That J. P. Clough and David McNutt shall, after duly qualifying, enter upon the duties of their office on the 1st Monday in April, 1881, and continue in office until the 1st Monday in January, 1883, or until their successors are elected and qualified.

SEC. 3. This act shall take effect and be in force from and after the 1st day of April, A. D. 1881.

Approved February 7, 1881.

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## SALARY OF ASSESSOR OF NEZ PERCE COUNTY.

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### AN ACT

#### FIXING THE SALARY OF THE ASSESSOR OF THE COUNTY OF NEZ PERCE.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The assessor of Nez Perce County shall hereafter be entitled to and receive the sum of seven hundred and fifty dollars per annum, for all services required by law to be rendered or performed by him as assessor.

Said sum to be paid quarterly out of the general fund of said county, as other claims against said fund are paid. He also shall have in addition to said sum, such pay and compensation as is allowed by law for assessing and collecting of the Territorial portion of taxes.

SEC. 2. All acts in conflict with this act, so far as relates to Nez Perce County, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved December 30th, 1880.

## HOSPITAL TAX IN NEZ PERCE COUNTY.

### AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT AUTHORIZING AND DIRECTING THE COLLECTION OF HOSPITAL TAX IN NEZ PERCE COUNTY," APPROVED JANUARY 9, 1877, AND AN ACT AMENDATORY THEREOF, APPROVED FEBRUARY 20, 1879.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. An act entitled "An Act authorizing and directing the collection of hospital tax in Nez Perce County," approved January 9th, 1877, and an act amendatory thereof, approved February 20th, 1879, are hereby repealed. Act repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved December 28th, 1880.

## CLERK OF THE BOARD OF COUNTY COMMISSIONERS OF NEZ PERCE COUNTY.

### AN ACT

TO REGULATE THE COMPENSATION OF THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS OF NEZ PERCE COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The clerk of the board of County Commissioners of Nez Perce County shall receive, for all ser- Salary of clerk.

vices as clerk of the board, a compensation of five dollars for each and every day actually employed as such clerk.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 4th, 1881.

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## SALARIES OF OFFICERS IN ONEIDA COUNTY.

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### AN ACT

FIXING THE SALARIES OF CERTAIN OFFICERS IN ONEIDA COUNTY.

*Be it enacted by the Legislative Assembly of Idaho Territory, as follows:*

Treasurer.

SECTION 1. The County Treasurer of Oneida County shall receive the sum of two hundred dollars per annum, payable quarterly out of the county treasury, for all services to be by him rendered to and for Oneida County.

*Provided*, that for any services rendered the Territory he shall receive such fees as may be allowed by law.

Assessor.

SEC. 2. The Assessor of Oneida County shall receive the sum of four dollars per day for each and every day employed; *Provided*, that the board of County Commissioners may fix the number of days not to exceed one hundred days; *Provided further*, that he shall be allowed five per centum for all taxes collected for county purposes.

Auditor and recorder.

SEC. 3. That the Auditor and Recorder of Oneida County shall receive the sum of three hundred dollars per annum for all services to be by him rendered to and for said County of Oneida, payable as provided for in section one of this act.

Sheriff.

SEC. 4. That the Sheriff of Oneida shall receive for mileage fees, when the same are by law a charge against the county, fifteen cents per mile each way, and any other charge for mileage other than provided by this section shall be illegal and void.

SEC. 5. That each and every one of the Commis-

sioners of Oneida County shall receive the compensation of four dollars per day for each and every day's actual attendance upon the sessions of the board, and shall also receive mileage of twenty cents per mile for each mile necessarily traveled in going to and returning from the county seat to attend regular or special sessions of the board; but no mileage shall be received for attending any adjourned sessions nor more than one mileage to each member for any regular or special session payable as provided for in section one of this act.

Commissioners.

SEC. 6. The probate Judge of Oneida County shall receive a salary of one hundred dollars per annum to be paid quarterly out of the general fund of said county, to be audited and allowed as other claims against said county are audited and allowed; *Provided*, that nothing in this section shall be so construed as to prohibit the Probate Judge of said county from receiving the same fees as Probate Judge and ex-officio clerk of the Probate Court, as are received by the Probate Judges of other counties of this Territory.

Probate judge.

SEC. 7. All acts and parts of acts in conflict with this act, shall not apply to Oneida County.

SEC. 8. This act to take effect and be in force from and after its passage.

Approved January 15, 1881.

## ONEIDA COUNTY—SALARIES OF CERTAIN OFFICERS.

### AN ACT

TO AMEND "AN ACT FIXING THE SALARIES OF CERTAIN OFFICERS IN ONEIDA COUNTY," APPROVED JANUARY 15, 1881.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the Treasurer of said county shall receive an annual salary of three hundred dollars, payable quarterly out of the treasury of said county, and shall receive no other compensation from said county.

Treasurer.

SEC. 2. That the Probate Judge of said county shall

Probate judge.



receive an annual salary of one hundred and fifty dollars, payable quarterly out of the treasury of said county; and shall receive no other compensation from said county.

Auditor.

SEC. 3. That the Auditor of said county shall receive an annual salary of three hundred and fifty dollars, payable quarterly out of the treasury of said county; and shall receive no other compensation from said county.

County commissioners.

SEC. 4. That each and every one of the Commissioners of said county shall receive the sum of six dollars per diem for each and every day in attendance upon the regular session of said Commissioners, and in travelling to and from the county seat to attend such sessions, and in addition thereto mileage at twenty cents per mile for each and every mile actually travelled; and they shall receive no other compensation from said county.

Construction of act.

SEC. 5. This act shall not be construed as in any way altering or repealing the acts of the Legislative Assembly allowing any of foregoing officers fees for performing services required of them in relation to the Territorial revenue.

SEC. 6. This act to take effect from and after its passage.

SEC. 7. All acts and parts of acts in conflict herewith are hereby repealed.

Approved February 10, 1881.

## STALLIONS IN ONEIDA COUNTY.

### AN ACT

TO PREVENT STALLIONS FROM RUNNING AT LARGE IN ONEIDA COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Unlawful for stallions to run at large.

SECTION 1. From and after the passage of this act, it shall not be lawful for the owner or owners of stallions over the age of one year, to allow the same to run at large in the County of Oneida.

SEC. 2 If any owner, or owners, or the agent of such owner or owners, shall permit any animal as aforesaid, contrary to the first section of this act, to run at large, it

shall be lawful for the person injured thereby to bring suit before any justice of the peace in the proper township, against the person or persons so offending, who, upon conviction, shall be fined in any sum not less than twenty dollars, nor more than one hundred dollars, to be collected as fines are now collected by law. Liability to suit.

SEC. 3. Should any such animal as aforesaid, be found trespassing upon lands or possessory claims of another, the person owning the land or possessory claim may take up and safely keep such animal, and when so doing shall give the owner or owners thereof five days notice that such an animal is in his or their possession; and if, at the expiration of the aforesaid time, the owner or owners shall neglect or refuse to remove such animal and pay for all reasonable costs of keeping the same, then the owner or owners of the land or possessory claim may cause such animal to be emasculated; *Provided*, however, that the emasculation of such animal shall not release the owner or owners thereof from the penalty imposed by section two of this act. Stallions trespassing.  
Notice to owner.  
Emasculation of stallions.

SEC. 4. Should the owner or owners of such animal be unknown, then in that case it shall be the duty of the person in whose possession the animal may be, to forthwith give notice, with the description of the animal, its marks or brands, in some newspaper, if one be published in the county, and if no newspaper be published in said county, then by three written or printed notices put up in the most public places in the county, for at least three weeks, calling upon the owner or owners, to come forward and claim the property; and, if at the expiration of one month thereafter, no such owner or owners shall appear, then it shall be the duty of such person having possession of such animal to deliver the same to the constable of the township, whose duty it shall be to publicly dispose of the same to the highest bidder for cash in hand, and, after paying all expenses necessary connected with such animal, to pay the remainder into the county treasury to be applied to the common school fund of said county; *Provided* however, that should the owner make claim to such property previous to sale being made, nothing in this act shall be so construed, as to exempt him from all expenses incurred, or from penalties imposed thereon. Notice.  
Sale by constable.  
Proceeds of sale.

SEC. 5. All acts, and parts of acts, so far as they conflict with the provisions of this act, shall have no force nor effect in Oneida County.

SEC. 6. This act to take effect, and be in force, from and after its passage.

Approved February 7th, 1881.

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## OWYHEE COUNTY—PROBATE JUDGE.

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### AN ACT

REGULATING THE SALARY AND FEES OF THE PROBATE JUDGE OF OWYHEE COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Salary.

SECTION 1. The Probate Judge of the County of Owyhee, in addition to the fees allowed by law, shall receive a salary of five hundred dollars per annum, to be paid quarterly, out of the "current expense and redemption fund" of said county, to be audited and allowed as other claims against said County are audited and allowed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 29, 1881.

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## OWYHEE COUNTY—REVENUES.

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### AN ACT

TO CONTINUE IN FORCE CERTAIN PROVISIONS OF AN ACT, ENTITLED AN ACT, REGULATING SALARIES AND FEES, AND THE COLLECTION AND DISBURSEMENT OF REVENUES IN OWYHEE COUNTY, APPROVED JANUARY 9, 1877.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The Assessor of Owyhee County shall continue to be the collector of all Territorial, county

and miscellaneous licenses in said county; and section five of said act, and all provisions of said act not in conflict with the amendments to the general revenue law, passed at the present session of the legislative assembly, shall not be affected by said amendment. Collection of revenues in Owyhee county.

SEC. 2. This act shall take effect from and after its passage.

Approved February 10, 1881.

## SHOSHONEE COUNTY—PROBATE JUDGE.

### AN ACT

#### REGULATING THE SALARY AND FEES OF THE PROBATE JUDGE OF SHOSHONEE COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The Probate Judge of Shoshonee County shall receive a salary of two hundred dollars per annum, to be paid quarterly out of the general fund of said county; to be audited and allowed as other claims against said county are audited and allowed. Salary.

SEC. 2. Nothing in this act shall be so construed as to prohibit the Probate Judge of said county, from receiving the same fees as Probate Judge and ex-officio clerk of the Probate Court, as are received by the Probate Judges of other counties of this Territory. Fees.

SEC. 3. All acts and parts of acts, so far as they conflict with the provision of this act, are hereby repealed.

SEC. 4. This act shall take effect and be in force, from and after its passage.

Approved January 10, 1881.

## SHOSHONEE COUNTY—TRANSFER OF FUNDS.

### AN ACT

TO AUTHORIZE THE TRANSFER OF CERTAIN MONEYS TO THE GENERAL FUND IN SHOSHONEE COUNTY, AND TO CANCEL THE INDEBTEDNESS OF SAID FUND TO THE SCHOOL FUND OF SAID COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Transfer from  
school to gen-  
eral fund.

SECTION 1. All moneys heretofore transferred from the school fund to the general fund of Shoshonee County, under authority of an act entitled "An act entitled an act to legalize certain proceedings of the board of Commissioners of Shoshonee County, approved December 27th, 1866, and the interest thereon, be and the same are hereby constituted a part of the general fund of said county; and all indebtedness of said general fund to said school fund for or on account of said moneys or interest, and all obligation to return the same to said school fund is hereby canceled."

Sinking fund,  
repeal of.

SEC. 2. An act entitled "An act to create a sinking fund, and to provide for the payment of certain moneys due to the school fund from the general fund of the county of Shoshonee," approved January 4th, 1877, be and the same is hereby repealed, and said sinking fund is hereby transferred to the general fund.

Transfer from.

SEC. 3. This act shall take effect, and be in force, from and after its passage.

Approved January 8th, 1881.

## CONTINGENT FUND IN SHOSHONEE COUNTY.

### AN ACT

TO CREATE A CONTINGENT FUND IN SHOSHONEE COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:*

SECTION 1. That five per cent. of all moneys in the general fund in the treasury of Shoshonee County shall constitute a contingent fund, subject to the order of the County Commissioners, to defray the expenses of printing, the purchase of books, stationery, fuel, and all other contingent expenses of said county. For printing, stationery, etc.

SEC. 2. That the remainder of said contingent fund Surplus. (if there be any), at the close of each year, be transferred by said Commissioners to the general fund of said county.

SEC. 3. This act shall take effect and in force from and after its passage.

Approved January 8th, 1881.

## BUTCHERS IN SHOSHONEE COUNTY.

### AN ACT

REQUIRING BUTCHERS AND DEALERS IN FRESH MEAT IN SHOSHONEE COUNTY TO PAY A LICENSE.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That all butchers and dealers in fresh License. beef, pork, or mutton, in Shoshonee county, shall pay a license of forty-five dollars quarterly in advance, to be

Disposal of  
money col-  
lected.

Penalty for  
violation of  
provisions of  
section 1.

Fines col-  
lected.

collected as all other licenses are collected in said county.

SEC. 2. One-fifth of all moneys so collected shall go into the Territorial treasury; the remaining four-fifths shall go to the general fund of said county.

SEC. 3. Any person or persons violating the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor; and on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than twenty-five, nor more than fifty, dollars for each offense, together with costs of suit. Justices of the Peace shall have jurisdiction in any case arising from the violation of the provisions of this act. All fines so collected shall go to the school fund of said county; *Provided*, however, that this act shall not apply to any persons butchering and selling meat from animals of their own raising.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act, shall not apply to Shoshonee County.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved February 9th, 1881.

## SHERIFF AND AUDITOR OF WASHINGTON COUNTY.

### AN ACT

#### FIXING THE SALARY OF THE SHERIFF AND AUDITOR OF WASHINGTON COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Sheriff

SECTION 1. The Sheriff of Washington County shall receive a salary of one hundred and fifty dollars per annum, to be paid quarterly out of the county treasury, for all services to be by him rendered for said county.

Auditor.

SEC. 2. The county auditor of Washington County shall receive the sum of three hundred dollars, payable quarterly out of the county treasury, for all services to be by him performed for said county as auditor and Clerk of the Board of County Commissioners; *Provided*,



that for any services rendered the Territory he shall receive such fees as may be allowed by law.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

## SALARY OF OFFICERS OF WASHINGTON COUNTY.

### AN ACT

#### REGULATING THE SALARY OF CERTAIN OFFICERS OF WASHINGTON COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The County Treasurer of Washington County shall receive the sum of one hundred and fifty dollars per annum, payable quarter yearly out of the county treasury, in lieu of the fees now provided by law for all services to be rendered or performed by him for said county; *Provided*, that for any services rendered the Territory he shall receive such fees as may be allowed by law. County treasurer.

SEC. 2. The Probate Judge of Washington County shall have and be paid a salary of one hundred dollars per annum, to be paid quarterly out of the current expense and redemption fund of said county, in addition to the fees as is now provided by law. Probate judge.

SEC. 3. The Assessor and Tax Collector of Washington County shall receive the sum of one hundred and twenty-five dollars per annum; *Provided*, that he shall be allowed twenty-five days for assessing the county, and, *Provided further*: that he shall receive five dollars per day for his services, and, *Provided also*: That he shall receive no other compensation other than that provided for by the Territory. Assessor and tax collector.

SEC. 4. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after the date of its passage.

Approved January 8, 1881.

## FENCES AND TRESPASSES IN CERTAIN COUNTIES.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT RELATING TO  
FENCES AND TRESPASSES IN THE COUNTIES OF  
NEZ PERCE, ONEIDA AND IDAHO.

*Be it enacted by the Legislative Assembly of the Terri-  
tory of Idaho, as follows:*

Fence of posts  
and boards.

Fence of posts  
and poles.

Height of law-  
ful fence.

Wire fence.

SECTION 1. That Section 2 of said act, be amended so as to read as follows: Sec. 2. A fence consisting of posts not more than nine feet apart, with four six inch boards or three eight inch boards, laid across from post to post, or if poles less than two and one-half inches in diameter at the small end be used instead of boards, six of such poles shall be used, one above another, and the posts shall not be more than nine feet apart; and it is *further provided*, that if poles be used in constructing fences, two and one-half inches or more in diameter at the small end, then the posts may be twelve feet apart, but no more; and four of such poles shall be a sufficient number for such lawful fence: and *provided further*, that if poles four inches or more in diameter at the small end be used, then the posts to which the said poles are fastened may be sixteen feet apart, but no more; *Provided*, however, that in all cases the said posts shall be firmly set in the ground and may be either single or double: and *provided, further*, that in all cases a lawful fence shall be at least four feet and one-half high, and the space between the ground and the first board or pole in all the above described fences, shall not be wider than one foot, and all spaces between the boards or poles shall be as nearly as may be, equally divided. And it is *further provided*, that in case a fence is built of posts and barbed or other wire, the posts may be twenty feet apart, but no more, and there shall be used in the construction of such wire fence three wires, one above another, together with one

board, heavy pole, or block wire; said board, block wire to be placed at the top of such fence, not less than four feet and one-half from the ground; the space between the ground and the lower wire of such fence shall not be more than eighteen inches, and all fences above shall be as nearly as may be, equally spaced; *Provided, further*, that all fences consisting of any one or other materials, and all fences of any description whatsoever, brooks, sloughs, hedges or other obstructions, which shall appear from evidence to be equal to the above described fences for the purpose of turning cattle, together with all fences herein described, shall be, and the same are hereby declared to be lawful fences. Other fences.

SEC. 2. This act shall apply to Oneida County only, Application of act.  
all acts and parts of acts in conflict with this act, shall not apply to said Oneida County.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 7th, 1881.

## BOISE CITY CHARTER—AMENDMENT TO.

### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE BOISE CITY, IN ADA COUNTY," APPROVED JANUARY 11, 1866.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. Section three of said act is amended to read as follows: Section 3. For the government of said city there shall be elected biennially a mayor, a common council, consisting of five members, a collector, a treasurer, and a justice of the peace for said city. And the mayor and common council shall appoint an attorney, a city marshal, a road supervisor, and such other officers as they shall think necessary, and shall define their duties and fix their compensation, and may remove them from office for any cause in their judgment sufficient. The mayor and common council shall receive no com- Officers and how chosen.

Same.	<p>pensation. The mayor shall preside at all meetings of the council, and shall have the casting vote in case of a tie vote upon the election of officers, or upon any other question; all ordinances shall be presented to him, and if he approve he shall sign the same, but if he do not approve, he shall return the same with his objections to the council, or file the same with the city clerk, within three days, after which the same shall not become a law unless passed by an affirmative vote of four members of the council.</p>
Election	<p>SEC. 2. Section four of said act is amended so as to read as follows: Section 4. An election for all city officers required by this act to be elected, shall be held on the second Monday of July, 1881, and biennially thereafter. No person is eligible to any office or qualified to vote at any election under this act, who, at the time of his election or appointment, or at the time of such election, is not a qualified elector of Ada county, and who has not resided in said city for the three months next preceding his election or appointment, or the day of such city election. City elections shall be conducted, as near as may be, in the same manner as county elections. The polls shall be opened at nine o'clock in the forenoon, and shall continue open until six o'clock of the same day without closing, and returns of the election shall be made within two days thereafter to the city clerk, who shall open and canvass the same in the presence of the mayor and common council, who shall declare the result.</p>
Eligibility.	
Election, how conducted.	
Canvass of returns.	<p>Any qualified elector of said city may challenge the vote of any person offering to vote at any city election, and any vote so challenged shall not be received unless the person offering the same shall make oath or affirmation to his qualifications as aforesaid, which oath or affirmation shall at his request be administered to him by one of the judges of election; and any person who shall corruptly and falsely take such oath or affirmation shall be guilty of, and upon conviction thereof shall suffer the pains and penalty of perjury.</p>
Who may challenge votes.	
Oath.	
Penalty for taking false oath.	<p>SEC. 3. Section five of said act is amended to read as follows: Section 5. The mayor and common council shall have full power and authority within Boise City:</p>
Authority of council.	
Taxes.	
Licenses.	<p>1. To assess, levy and collect taxes for general municipal purposes, not to exceed one-half of one per centum per annum upon all property, both real and personal, which is taxable by law for Territorial or county purposes;</p> <p>2. To license, tax and regulate auctioneers, taverns,</p>

hawkers, peddlers, pawnbrokers, Chinese wash-houses, Same. and all offensive or noxious trades or occupations;

3. To license, tax and regulate hacks, cabs, hackneys, carriages, wagons, carts, drays, or other vehicles, and to fix the rates thereof;

4. To regulate and restrain, and in their discretion, upon special application, to license and tax the sale of liquors in less quantities than one quart, bar rooms, liquor saloons, drinking shops, theatrical and other exhibitions, shows, public amusements, billiard tables, bowling alleys, gaming and gambling houses, and to require bonds with sureties from the proprietors of the same, conditioned not to keep, allow or permit disorderly house; and to cancel and revoke every such license, in their discretion; *Provided*, That no territorial or county license shall authorize any person to engage in or conduct any business or thing in this or the two proceeding subdivisions enumerated, within said Boise City, unless a license is first obtained from said city council, and the council may provide a penalty therefor;

5. To suppress bawdy houses, and houses of ill fame Houses of ill-fame. in said city, or in any part thereof, and to provide by ordinance the punishment of any person or persons, who shall open, set up, or keep the same, or who shall reside in, frequent or visit the same.

6. To suppress opium dens, and any house or place Opium kept or used as a resort for the purpose of smoking opium, and to provide by ordinance for the punishment of any person or persons who shall set up, open, or cause to be opened, or keep any house or place as a resort for the purpose of smoking opium, or who shall sell, vend, or give away opium for the purpose of being smoked upon the premises, or who shall bargain for, buy, take or accept any opium in any house or place to be smoked upon the premises, or who shall be found in any house or place kept or used as a resort for the purpose of smoking opium, or who shall smoke opium in any house not the dwelling house of such person or persons.

7. To make regulations to prevent the introduction of contagious diseases in the city: to remove persons Contagious diseases. affected with such diseases therefrom, to suitable hospitals provided by the city for that purpose: to secure the protection of persons and property therein, and to provide for the health, cleanliness, ornament, peace and good order of the city. Nuisances.

8. To prevent and remove nuisances.

9. To provide the city with good and wholesome

- Water works.** water, and for the erection or construction of such water works and reservoirs within or without the limits of the city, as may be necessary or convenient therefor;
- Lighting streets.** 10. To provide for lighting the streets, and furnishing the city with gas or other light, and for the erection or construction of such works as may be necessary or convenient therefore.
- Vagrants and paupers.** 11. To provide for the support, restraint and employments of vagrants and paupers.
- Fires.** 12. To provide for the prevention and extinguishment of fires and the preservation of property endangered thereby; to establish, alter and change fire limits and regulate the erection of buildings and improvements within such fire limits, and the materials to be used therefor, to control and regulate the fire department, and provide by ordinance for the officers thereof, and the election of such officers by the members of such fire department or otherwise, and to define the duties of such officers, and to remove them from office for good cause shown.
- Police.** 13. To determine and regulate, the number of day and night police, or either of them: to provide for paying the same, and to regulate and fix the compensation of the policemen, the keeper of the city prison, and of the house of correction:
- Streets.** 14. To provide for the prevention and removal of all obstructions from the streets, cross and sidewalks, and for the cleaning and repairing of the same.
- Public pound and the running at large of animals.** 15. To establish a public Pound, and to restrain and regulate the running at large of cattle, horses, swine, sheep, dogs, and other animals, within the limits of the corporation; and to authorize and regulate, by ordinance, distraining, impounding, and sale of the same, for the penalty imposed and the costs of the proceedings; and to authorize the destruction of dogs, when at large contrary to any prohibition of any such ordinance.
- Markets and slaughter-houses.** 16. To provide for the establishment of market-houses and places, and to regulate the location and management of market-houses, places, and slaughter-houses.
- Jail, house of correction and workhouse.** 17. To provide for the erection of a city jail, house of correction, and workhouse, and the government and management of the same.
- Combustibles.** 18. To regulate the storage and sale of gunpowder, or other combustible material, and to prevent, by all possible and proper means, danger or risk of injury or damage by fire arising from carelessness, negligence, or otherwise.

19. To restrain and punish any disturbance, or any Disturbances.  
unlawful or indecent practice.

20. To establish and regulate the fees and compensa- Compensation  
tion of all officers of this municipal corporation, except and fees of  
when otherwise provided. officers.

21. To provide for the punishment of a violation of May provide  
any ordinance of the city, by fine or imprisonment, not punishments  
exceeding one hundred dollars, or twenty days, or both, for violation of  
or by a forfeiture or penalty not exceeding one hundred ordinance.  
dollars, and for working any person sentenced to such  
imprisonment upon the street or public squares during  
the term thereof.

22. To levy and collect a special tax of not exceeding May levy spe-  
one per centum per annum, upon all the property as- cial tax.  
sessed by authority of the first subdivision of this sec-  
tion, for any specific object within the authority of this  
municipal corporation, including the payment of any  
existing debt; but the ordinance providing therefor must  
specify the object thereof, and the estimated amount  
therefor.

23. To borrow money on the faith of the city, or Borrow money.  
loan the credit thereof or both. But the total indebted-  
ness of the city shall at no time exceed fifteen thousand  
dollars.

24. To appropriate money to pay the debts, liabili- Appropriate  
ties, and expenditures of the city, or any part or item money.  
thereof, from any fund applicable thereto.

25. To provide for a survey of the blocks and streets Survey of  
of the city, and for making and establishing the boun- of blocks etc.  
dary lines of such blocks and streets.

26. To exercise such power and authority as may be  
given to the council elsewhere in this act, or by the laws  
of this Territory.

27. To appoint one of their members city clerk, City clerk.  
define his duties, and fix his compensation.

28. To fill any vacancy in their number, or in any city Fill vacancies.  
office except justice of the peace for said city; and the  
person so appointed shall serve until the next city elec-  
tion, and until his successor is elected and qualified.

29. To appoint two judges and one clerk of each city Judges and  
election, who shall have the powers conferred and per- clerk of elec-  
form the duties, and be liable to the penalties imposed tion.  
upon like officers serving at any general Territorial elec-  
tion, except as otherwise provided in this act.

30. To open and establish streets and alleys, and widen Streets and al-  
the same, and for that purpose to condemn property for leys.  
the city use, under such regulations as are or may be



Jurisdiction of  
Justice of the  
Peace.

Ordinances  
and rules of or-  
der.

County com-  
missioners to  
fill vacancy in  
office of justice.

provided by law. The powers and authority conferred by this section may be enforced or exercised by ordinances, unless otherwise expressly provided; and the city council may pass any ordinance, not repugnant to the Constitution and laws of the United States or the laws of this Territory, necessary or convenient for carrying such powers and authority or any part thereof into effect, and the justice of the peace for said city shall have in addition to the jurisdiction conferred by law upon justices of the peace concurrent jurisdiction with any other justice of the peace within said city, and with the Probate Judge of Ada county, of all violations of the ordinances of said city. Said city council may also make all needful by-laws, ordinances, and regulations not repugnant to the Constitution and laws of the United States, or of this Territory, and prescribe their own rules for doing business, and may elect any member, to preside at their meetings in or during the absence of the mayor. And it shall be the duty of the County Commissioners of Ada county to fill any vacancy that may occur in the office of justice of the peace for said city by the appointment of some suitable and qualified person who shall hold his office until his successor is elected and qualified.

SEC. 4. An act entitled "An Act to amend an Act entitled an Act to incorporate Boise City, in Ada County approved January 11th, A. D. 1866," approved February 21, 1879, is hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved January 28, 1881.

## BOISE CITY INDEPENDENT SCHOOL DISTRICT.

### AN ACT

TO CREATE THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY, AND TO PROVIDE FOR ESTABLISHING AND MAINTAINING A GRADED PUBLIC SCHOOL THEREIN.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. All that part of Ada county described as follows, to-wit:

Commencing at a point on the north bank of Boise river, at the center of the northwest quarter of section number fourteen, in township number three north, range number two, east of the Boise meridian;

Thence north to the centre of west half of section Boundary. number eleven;

Thence east to the center of east half of section eleven;

Thence north to the south boundary of Fort Boise reserve;

Thence southwesterly along said boundary to the southwest corner of Fort Boise reserve;

Thence northwesterly to the northwest corner of Fort Boise reserve;

Thence northeasterly along the north boundary of Fort Boise reserve to the intersection of section number one;

Thence north to the corner to sections number 25, 26, 35, and 36, in township number four north, of range number two, east of the Boise meridian;

Thence west to the center of the east half of sections number 28 and 33, in township number four north, of range number two, east of the Boise meridian;

Thence south to the center of the northeast quarter of section number four, in township number three north, range number two, east of the Boise meridian;

Disposal of  
money col-  
lected.

Penalty for  
violation of  
provisions of  
section 1.

Fines col-  
lected.

collected as all other licenses are collected in said county.

SEC. 2. One-fifth of all moneys so collected shall go into the Territorial treasury; the remaining four-fifths shall go to the general fund of said county.

SEC. 3. Any person or persons violating the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor; and on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than twenty-five, nor more than fifty, dollars for each offense, together with costs of suit. Justices of the Peace shall have jurisdiction in any case arising from the violation of the provisions of this act. All fines so collected shall go to the school fund of said county; *Provided*, however, that this act shall not apply to any persons butchering and selling meat from animals of their own raising.

SEC. 4. All acts and parts of acts in conflict with the provisions of this act, shall not apply to Shoshonee County.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved February 9th, 1881.

## SHERIFF AND AUDITOR OF WASHINGTON COUNTY.

### AN ACT

#### FIXING THE SALARY OF THE SHERIFF AND AUDITOR OF WASHINGTON COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Sheriff.

SECTION 1. The Sheriff of Washington County shall receive a salary of one hundred and fifty dollars per annum, to be paid quarterly out of the county treasury, for all services to be by him rendered for said county.

Auditor.

SEC. 2. The county auditor of Washington County shall receive the sum of three hundred dollars, payable quarterly out of the county treasury, for all services to be by him performed for said county as auditor and Clerk of the Board of County Commissioners; *Provided*,

that for any services rendered the Territory he shall receive such fees as may be allowed by law.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 1, 1881.

## SALARY OF OFFICERS OF WASHINGTON COUNTY.

### AN ACT

#### REGULATING THE SALARY OF CERTAIN OFFICERS OF WASHINGTON COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The County Treasurer of Washington County treasurer. shall receive the sum of one hundred and fifty dollars per annum, payable quarter yearly out of the county treasury, in lieu of the fees now provided by law for all services to be rendered or performed by him for said county; *Provided*, that for any services rendered the Territory he shall receive such fees as may be allowed by law.

SEC. 2. The Probate Judge of Washington County Probate judge. shall have and be paid a salary of one hundred dollars per annum, to be paid quarterly out of the current expense and redemption fund of said county, in addition to the fees as is now provided by law.

SEC. 3. The Assessor and Tax Collector of Washington County shall receive the sum of one hundred and twenty-five dollars per annum; *Provided*, that he shall be allowed twenty-five days for assessing the county, and, *Provided further*: that he shall receive five dollars per day for his services, and, *Provided also*: That he shall receive no other compensation other than that provided for by the Territory. Assessor and tax collector.

SEC. 4. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after the date of its passage.

Approved January 8, 1881.

Bonds for erection of school building.

lars of negotiable coupon bonds of said district, in sums of one hundred and five hundred dollars each, bearing interest at the rate of eight per centum per annum, payable semi-annually on the first day of January and the first day of July of each year, and twenty-five hundred dollars of said bonds shall mature on the first day of July, 1886, and twenty-five hundred dollars thereof on the first day of July annually thereafter until all are paid; and the principal and the interest thereof shall be payable at the First National Bank of Idaho, at Boise City, or in case said bank shall not be in existence, at the office of the treasurer of said district in Boise City. Said bonds shall be issued in the corporate name of said district, sealed with its corporate seal, signed by the mayor as president of the board of trustees, and countersigned by the clerk of said board, and shall bear such vignette and devices as the trustees may direct; they shall, previous to being negotiable, be numbered consecutively and registered by the clerk of the board in a book kept by him for that purpose, which shall be a public record, noting the amount, time of payment, and rate of interest, and all of said bonds shall state on their face that they are issued under the provisions of this act. And if, during the construction of the school building hereinafter provided for, the board of trustees shall find it necessary to the completion and, furnishing of the same, and for the providing of all necessary fixtures and apparatus, they may issue an additional amount of said bonds, not exceeding ten thousand dollars additional, which shall be in all respects similar to, and shall be registered and numbered consecutively after the first issue; and twenty-five hundred dollars thereof shall mature on the first day of July next after the last of the first issue shall have matured, and a like amount on the first day of July annually thereafter until all are paid.

Public moneys for use of district.

SEC. 8. Said independent school district shall receive from the public school moneys of Ada County, both county and Territorial, now distributed, or that may be distributed under the general school law of the Territory, in addition to the per capita share of said district, in proportion to the number of children in said district between five and twenty-one years of age, as shown by the last report of the school census marshal of said district, one equal share with the other districts of said county for every fifty children, or fraction of thirty-five children in said district between the ages aforesaid, as shown by such report, of said school moneys divided, or

that may be divided, among the several organized districts of said county that have complied with the provisions of the general school law, and said moneys shall be apportioned accordingly; and said moneys at each apportionment, after the passage of this act, shall be paid by the treasurer of Ada County to the treasurer of said district, taking his receipt therefor; *Provided*, that the number of school districts in the county, outside of said independent school district, shall not be increased so that the average number of children in said districts, of school age, shall be less than twenty-six. Number of districts in county.

SEC. 9. When said district shall have issued bonds under the provisions of this act, it shall be the duty of the board of trustees to levy and assess an annual tax on all the taxable property of said district, found upon the last completed and equalized assessment roll of Ada county, in an amount sufficient to pay the interest coupons upon all the outstanding bonds, when and as fast as said coupons shall become due according to their tenor and effect, after deducting from the the amount of such coupons growing due within the ensuing twelve months, any moneys received under the preceding section and in the treasury of the district, and not necessary, for the support and maintenance of the schools thereof; and the treasurer of said district shall collect said taxes, in cash only, as hereinafter provided, and shall pay the same into the treasury of said district to be by the treasurer applied in payment of the interest coupons of said bonds as they mature. And after the expiration of four years next after the issue of said bonds, and annually thereafter until the full payment of said bonds, the said board of trustees shall provide by taxation for, and shall collect twenty-five hundred dollars of the principal of said bonds, over and above the cost and expense of collection, which amount shall be assessed and collected the same as the tax for the payment of the interest coupons, and when collected shall be turned over to the treasurer of said school district; said money to be used only in the payment of said bonds. And the said payment shall be made by the treasurer of the district at the First National Bank of Idaho, in Boise City, or in case said bank shall not be in existence, at the office of said treasurer, in Boise City, as before provided, whenever any interest on, or any part of the principal of, said bonds shall be due and payable according to terms thereof. And the treasurer shall cancel the bonds redeemed in the presence of the board of trustees, and a minute of such cancel- Payment of interest on bonds. Payment of bonds.

Same.

lation shall be made by the clerk of the board in the register of the bonds, after which they shall be at the disposal of the board. And for the purpose of making the assessment and levy mentioned in this section, said board of trustees shall have access to the assessment rolls of the county of Ada, and the clerk of said board and the treasurer of said district may take transcripts of any part thereof, and any such transcript, certified by either of said officers, shall be *prima facie* and competent evidence of what it purports to contain.

Change of  
boundary lines  
of district.

SEC. 10. No change in the boundary lines of said District shall release the taxable real estate of the district from assessment and levy of taxes to pay the interest and principal of said bonds, and the taxable property of said district is hereby solemnly pledged for the payment of the same; and if there shall be any change of the lines of said district, so as to leave any portion of the taxable real estate of the district out of the district, which was subject to taxation in the district at the time of the issue of said bonds, the assessment and levy for principal and interest of such bonds shall be made on such property as if it were still within the district, and if there shall be any change of the lines of said district so as to annex any taxable real estate, after the issue of said bonds, the real estate so annexed shall thereafter be subject to the assessment and levy for principal and interest of said bonds until they are fully paid.

Notice of tax.

SEC. 11. Upon the levy of any tax authorized by this act the treasurer of said district shall immediately give notice thereof by publication, for four successive weeks, in some newspaper published in said district, and in two such newspapers, if there be two published in said district, which notice shall state the rate, or the amount upon the dollar, of the levy, and that such tax is payable and will, at the expiration of thirty days from the first publication of said notice, be due at the office of the treasurer of said district, upon all taxable property of said district found upon the assessment roll of Ada County for the year 18—— (inserting the year of the assessment roll upon which the levy was made) and unless paid within said thirty days will become delinquent and will be collected according to law.

SEC. 12. At the expiration of said thirty days the treasurer of said district shall enter upon his official tax book a statement that he has made a levy upon all the property upon which said tax was levied by the board of trustees as aforesaid, the taxes upon which have not been



paid, and shall immediately ascertain the total amount of said taxes then delinquent, and file in the office of the clerk of said board a statement of said amount, verified by the oath of himself, or deputy, and shall proceed to make out and file with the clerk of the board a list of all persons and property then owing any taxes, verified by the oath of himself, or deputy, which list shall be completed within five days from the expiration of said period of thirty days, and shall be known as the delinquent list of said district.

SEC. 13. Said treasurer shall thereupon cause said delinquent list to be published, giving in said publication the name of the owner (when known) of all real estate, of all improvements, together with such a condensed description of the property, that it may be easily known, and also a similar condensed description of any real estate or improvements assessed to unknown owners, and also the name of every party delinquent for any tax on personal property, and also opposite each name or description the amount of taxes, including the costs, due from each delinquent person or property, which costs shall be one dollar for each name or assessment of property, in addition to the fifteen per cent. hereinafter provided, all of which costs and percentage shall be paid into the treasury of the district. The publication by this section required shall be made by one insertion, one time a week for three successive weeks, in a newspaper published in said district, or a supplement thereof, but the treasurer may omit from said publication any property, the taxes upon which, together with fifteen per cent. thereon and said costs, shall have been paid after the same became delinquent as aforesaid, and before the publication. Said publication shall also designate the time and place of commencing the sale, which time shall not be less than twenty-one days from the first appearance of the publication, and the place of sale shall be in front of the city hall or place of meeting of the city council of Boise City. On the day and at the place fixed for the sale, or on some subsequent day to which he may have postponed it, of which he shall give due notice, the treasurer shall, between the hours of ten o'clock A. M. and three o'clock P. M., commence to sell the real estate and improvements advertised, and upon which the taxes, percentage and costs have not been paid, commencing at the head of the list and continuing it alphabetically through, unless the sale is adjourned until another day; and power is hereby given to the treasurer to post-

Sale of prop-  
erty for tax.

pone the day of commencing the sale, and to postpone the sale from day to day, after it has been commenced, if he deems best for the interest of the district, or if the interest of the taxpayers will be served by such postponement; but the sale shall be completed within one week from the day first fixed as the day of sale. The person who will take the least quantity or smallest part of the property, or, in case an undivided interest is assessed, then the smallest portion of such interest, and pay the taxes and costs due, including one dollar, which the treasurer shall be entitled to receive for a duplicate certificate of sale, shall be declared to be the purchaser, and shall pay the taxes and costs thereon before ten o'clock A. M. of the following day, or the property shall on the next day, before the regular list is commenced, be again put up and sold as though it had not been offered; and any person bidding off any property and not taking it, shall be excluded from again bidding on any property advertised in the delinquent list. But the treasurer in selling any property under this section shall only sell the smallest quantity that any purchaser will take and pay the taxes and all costs, in all cases to be designated by the owner or possessor thereof, if present; *Provided*, that when the day upon which any act is required, by this act, to be done or performed, falls on Sunday or any legal holiday, the same may be done or performed on the next succeeding day.

Place of sale.

SEC. 14. In all cases when such property is real or fixed, the sale shall be in front of the City Hall, or place of meeting of the City Council of Boise City; in all other cases it shall be the duty of the treasurer to seize any property whatever belonging to the delinquent, and, upon one day's notice, posted in three public places in the district, to sell so much thereof as may be necessary to pay taxes and costs and expenses of sale. If any real estate, or the improvements thereon, cannot be sold for the amount of taxes and charges due thereon, it shall be passed over for the time being, but shall, before the close of the sale, be reoffered.

Payment of de-  
linquent tax.

SEC. 15. At any time after the publication of the delinquent list and before the sale of the property of any delinquent taxpayer, he may pay into the treasury of the district the taxes due thereon, with twenty-five per cent. thereon additional, and the costs and expenses to the time of payment, and upon such payment such property shall not be sold.

SEC. 16. Upon receiving the taxes and costs for any

property sold, the treasurer shall issue to the purchaser a certificate that he has sold the property (describing it), specifying the amount of taxes and costs, and that the property was sold for the payment of delinquent school tax levied for the year 18—; and he shall date such certificate on the day of sale. Certificate of sale.

SEC. 17. The purchaser shall file such certificate in the office of the County Recorder of Ada county, and it shall constitute a valid lien against the property specified therein, and shall entitle the purchaser, at the expiration of the time hereinafter specified within which such property may be redeemed, to a deed, which, if there be no redemption, the treasurer shall officially execute, and for which he shall receive from the purchaser the sum of two dollars and fifty cents. Deed of property, sold for taxes.

SEC. 18. All real estate so sold for delinquent taxes may be redeemed from such sale by any person interested therein, as in case of sale upon execution, as provided in civil cases, by paying to the purchaser, or depositing with the treasurer for him, the amount of taxes and costs with fifty per cent. thereon; or twenty-five per cent. thereon, if the redemption is made within three months from the date of the certificate of sale. And in case of redemption, the treasurer shall mark the word "redeemed," the date, and by whom redeemed, across the certificate on file in the recorder's office, and also mark the word "redeemed" on said delinquent list, for which services the treasurer shall receive from the redemptioner the sum of one dollar. Redemption.

SEC. 19. Said delinquent lists, or a copy thereof, certified by the treasurer of said district, showing unpaid taxes against any person or property, shall be *prima facie* evidence in any court to prove the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. Evidence of taxes unpaid.

SEC. 20. The Code of Civil Procedure of this Territory, so far as the same is not inconsistent with the provisions of this act, is hereby made applicable to proceedings under this act, and any deed derived from a sale of real property under this act shall be conclusive evidence of title, except as against actual frauds, or prepayment of the taxes upon which such sale was made, and shall entitle the holder thereof to a writ from the District Court to obtain possession of such property. Evidence of title of property.

SEC. 21. The treasurer shall, on the receipt of any

Moneys collected.

money for taxes, enter each collection, and the date thereof, opposite the proper names, or property, in the delinquent list, which shall be open to public inspection; and all moneys collected under this act shall without delay be paid into the treasury of the district; and upon the completion of any sale for delinquent taxes the treasurer shall file with the clerk of the board of trustees a list of all such sales made by him under the provisions of this act, stating therein the names of the delinquents (if known), or, if unknown, a description of the property, and such list shall be verified by his affidavit that it contains all sales made by him. The treasurer shall at the same time deliver to the clerk of the board a written statement of all delinquent taxes upon said delinquent list remaining uncollected, with his reasons in detail for not being able to collect the same, or for not making sales, and the board of trustees shall revise the same by striking off such taxes as cannot be collected, and the list shall then be returned to the treasurer, and he shall proceed to collect the delinquent taxes not so stricken off, as other delinquent taxes are collected.

Uncollected taxes.

Additional tax.

SEC. 22. If the moneys received under section eight are not sufficient for the support and maintenance of the school and to pay the current expenses of said district, the board of trustees may include in any levy made by them for the payment of the interest or principal of said bonds under section nine, an additional tax upon the property mentioned in said section, not exceeding one per cent., for the support and maintenance of the school and payment of the current expenses of the district, and may, if found necessary for such purpose, after the payment of said bonds, levy such tax annually.

Treasurer of district.

SEC. 23. The treasurer of said district shall, at the regular meetings of the board of trustees in April and November, and as much oftener as required by the board, make a full detailed and verified statement of all moneys received by him, and the persons and sources from which it was received, and of all moneys disbursed and paid out, and the persons to whom and the purposes for which it was disbursed, and of the balance on hand. And the treasurer shall not pay out or disburse any moneys belonging to said district, except in payment of the principal and interest of said bonds when due according to their terms, without an order or requisition of the board, or the proper officers thereof, under such regulations as the board may establish.

SEC. 24. The board of trustees, or the treasurer of

the district under their direction, shall negotiate and sell said bonds for cash, and the proceeds thereof shall be placed in the treasury of the district; and the bonds having the shortest time to run shall be first sold; and when twelve thousand five hundred dollars of said bonds have been so sold, the board shall secure an appropriate site for a union graded school building; and the remaining twelve thousand five hundred dollars of said bonds shall not be negotiated until such a site is secured and plans and complete specifications of the proposed school building, by a competent architect, are secured and adopted by the board. The board shall not expend more than four thousand dollars of the proceeds of said bonds in the purchase of a site for said building, and the remainder of the proceeds of said twenty-five thousand dollars of bonds, after payment for the site, shall be devoted by the board to the erection, completion, equipment and furnishing of such school building; and if a suitable site for said building shall be secured without expense to said district, then the whole of the proceeds of said twenty-five thousand dollars of bonds shall be so devoted; and Boise City is hereby authorized and empowered to convey to said school district, as a site for said building, the westerly half of the square bounded by Jefferson, State, Sixth and Eighth streets, as designated on the official plat of Boise City, in the recorder's office of Ada county, and the mayor of said city is authorized and directed in his official capacity to execute such conveyance to said district in trust for the erection and maintenance of a union graded school building thereon, and said board of trustees is authorized to accept such conveyance upon such trust, for and on behalf of said district, and in such case to erect said school building thereon.

SEC. 25. The board of trustees is authorized to expend not exceeding one thousand dollars of the proceeds of said bonds to secure plans and complete specifications for said building, by a competent architect; and they may appoint one of their number, or some other competent person, the superintendent of the construction thereof, and allow him such reasonable compensation for his services as may be just; but any plans and specifications adopted by the board shall be on the basis of the erection, completion, equipment, and furnishing of the building ready for use, with all necessary apparatus, including the necessary cost and improvement of the ground and the expense of an architect and superintendent of construction, for twenty-five thousand dollars, and the board

Same.

shall not issue any part of the additional ten thousand dollars of bonds hereinbefore authorized, except to meet some unforeseen deficiency in the proceeds of bonds, or otherwise, or when found necessary to render the expenditures already made fully available for the best interests of the district.

Debts and property of districts incorporated in district of Boise city.

SEC. 26. Said building shall be completed and ready for occupation by the schools of the district by the first Monday of September, A. D. 1882. All the property, rights and powers of school districts numbers one, twenty-two and twenty-four, of Ada county, are hereby conveyed to the district by this act created, and said district shall pay all the just indebtedness of said districts numbers one, twenty-two and twenty-four. The board of trustees provided for by this act may, whenever any of said property shall be no longer necessary, or when the best interests of their district require it, dispose of any of said property, and the proceeds thereof shall be paid into the treasury of the district; and until the completion of said union school building, said board may maintain such schools in such places in their district as in their judgment may be necessary.

Grade of schools.

SEC. 27. And, upon the completion of said building, the board of trustees shall establish in said district a graded union free school of four grades, a primary, a secondary, a grammar, and a high school; and said board shall exercise all the powers and perform all the duties, with reference to the schools of said district, that are accorded to and required of school trustees throughout the Territory by the general school law, when not otherwise provided by this act; and shall have power to establish and prescribe the qualifications and manner of examination for admittance to the several grades of said union school, and regulate the branches taught and the discipline of the schools of the district. And every child, resident of said district, and between the ages of six and twenty-one years, shall, of right, be entitled to the advantages of said school and of every department thereof, according to their proficiency, without charge therefor.

Powers of board of trustees.

By laws.

SEC. 28. The board of trustees of said district shall have power, and it shall be their duty:

First. To make such by-laws for their own government, and for the government of the schools of the district, as they may deem expedient, not inconsistent with the provisions of this act;

Second. To employ or discharge teachers, mechanics,

107/9



and laborers, and to fix, allow, and order paid, their salaries and compensation, and to determine the rates of tuition for non-resident pupils; Employment of teachers.

Third. To fix the course of study, the exercises, and the kind of text books to be used; *Provided*, that but one kind of text-books of the same grade or branch of study shall be used in the same department of the school, and that after the adoption of any book it shall not be changed in less than three years, unless the price thereof shall be unwarrantably advanced, or the mechanical quality lowered, or the supply stopped; Text books.

Fourth. To provide for school furniture, fixtures, and apparatus, and for everything needed in the school house or for the use of the board; Furniture.

Fifth. To rent, repair and insure school houses and property, and preserve the same for the benefit of the schools of the district; Repair of school houses.

Sixth. To build or remove school houses and buildings and to purchase or sell school lots; Building.

Seventh. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school children under six years of age; Expel pupils.

Eighth. To determine the number and qualifications of teachers that shall be employed, and length of time that the school shall be kept; to fix the time for the opening or closing of school, and for the dismissal of primary pupils before the regular time for closing schools; Qualifications of teachers.

Ninth. To provide books for the use of indigent children, on the written statement of the teacher that the parents of such children are not able to purchase them; Books for poor.

Tenth. To require pupils to be furnished with proper and suitable books as a condition of membership in the school; Proper books.

Eleventh. To exclude from the schools and school libraries of said district all books, tracts, papers or catechisms of a sectarian nature; Sectarian books, etc.

Twelfth. To require teachers to conform to the law and the regulations of the board; Law of board.

Thirteenth. To protect the morals and health of the pupils while at school. Morals.

SEC. 29. There shall be an election for two members of the board of trustees of said district, held on the first Monday of September, A. D. 1882, and biennially thereafter, and the clerk of the board shall give ten days notice of the time and place of said election by publication in some newspaper published in said district. Every resident property taxpayer of said district, who has been Election of trustees.



Same.

such resident of the district for the three months next prior to any such election, and who is legally qualified to vote at a general election for county officers in Ada county, shall be entitled to vote at said school election in said district. Any person offering to vote may be challenged by any legally qualified elector of the district, and any one of the judges of the election shall thereupon administer to the person challenged an oath, as follows: "You do solemnly swear (or affirm) that you are a citizen of the United States; that you have resided in this Territory for four months last past; and in this school district for three months last past; and that you are now a resident property taxpayer of this school district; that you are twenty-one years of age; and that you have not voted at this election." If he shall refuse to take such oath or affirmation, his vote shall be rejected. Any person guilty of voting illegally shall be punished as is or may be provided in the general election law of this Territory for the punishment of illegal voting at a general election. Any three members of the board of trustees whose terms are not to be filled at said election, may act as judges of the election, and should there not be three such members present at the opening of the polls, the electors present shall appoint a legal voter to fill the vacancy. One of the judges shall act as clerk. At said election the polls shall be opened by one of the board of trustees, or by any qualified voter, if no trustee shall be present, at ten o'clock in the forenoon, and closed at four o'clock in the afternoon of the same day. Such election shall be conducted generally, when not otherwise provided by this act, as county elections are conducted; and any member of the board of trustees, or any magistrate, may qualify the officers of election faithfully to perform their duties as such, and to make true returns of said election to the board of trustees of said district; and for any violation of such duties, any of said officers shall be liable to the same pains and penalties as are or may be provided by the general election law for like offenses by officers of any general election.

Officers of election.

SEC. 30. Voting at said elections shall be by ballot, and immediately after the closing of the polls the judges shall proceed to count the votes and ascertain the result, and the two persons qualified to be elected, who shall receive the largest number of votes, shall be declared elected, and the judges of election shall certify the result and deliver such certificate with the poll-lists and tally-sheets to the clerk of the board of trustees; and

if upon counting the votes there shall be a tie, and three <sup>Tie votes.</sup> qualified persons shall have the highest number of votes, the board of trustees shall choose two from among the three; or if one qualified person shall have the highest number of votes and two or more qualified persons shall have the second highest number of votes, said board shall choose one trustee from among said persons.

SEC. 31. This act shall take effect and be in force from and after its passage.

Approved February 4, 1881.

*new Sec added '87 p. 11*  
*\* 31, 32, 33, 34, 35, 36 & 37 added, L 07, p 11-12*

## FRANKLIN CITY.

### AN ACT

TO REPEAL AN ACT ENTITLED "AN ACT TO INCORPORATE FRANKLIN CITY IN ONEIDA COUNTY," APPROVED JANUARY 10, A. D., 1873.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That an act entitled "An Act to incorporate Franklin City in Oneida County," be and the <sup>Repeal of incorporation.</sup> same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after the first Monday in June, A. D. 1881.

Approved January 15, 1881.

# CHARTER OF THE CITY OF LEWISTON.

## AN ACT

TO AMEND THE CHARTER OF THE CITY OF LEWISTON.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

### CHAPTER I.

#### Limits.

SECTION 1. That the corporate limits of the city of Lewiston shall be as follows, to-wit: Commencing at the confluence of the Snake and Clearwater rivers, on the boundary line between the Territories of Idaho and Washington, and running thence along said boundary line southward to a point opposite to the subdivision line between lots two and three of section one, township number thirty-five, north of range six west; thence due east on said subdivision line to a point upon the east line of section six, township number thirty-five, north of range five west; thence due north along said line to the mid-channel of the Clearwater River; thence westerly along said channel to the place of beginning.

#### Incorporation.

SEC. 2. The inhabitants within the city of Lewiston are hereby constituted and declared to be a municipal corporation, by the name and style of the city of Lewiston, and by that name shall have perpetual succession, and may sue and be sued, plead and be impleaded, in all courts of justice, contract and be contracted with, and have and use a common seal, and alter the same at pleasure.

### CHAPTER II.

#### POWERS OF THE CORPORATION.

#### Taxes for general purposes.

SECTION 3. Said city has the power to assess, levy and collect taxes for general municipal purposes, not to exceed one-half per centum per annum, upon all property,

both real and personal, within the city limits which is same by law taxable for Territorial and county purposes, and to levy and collect special taxes as hereinafter provided; but all taxes for general and special municipal purposes, exclusive of assessments, as hereinafter provided, shall not exceed one and one-half per centum annually on the property assessed.

SEC. 4. To make regulations for the prevention of accidents by fire; to organize and establish fire departments, and provide for the government of the same; to provide fire engines and other apparatus, and a sufficient supply of water, and to levy and collect special taxes for these purposes, not to exceed one-fifth one per centum annually, upon the taxable property within the city; and on petition of the owners of one-half the ground included within any prescribed limits within the city, to prohibit the erection within such limits of any building, or addition to any building, unless the outer walls thereof be made of brick and mortar, or iron, or stone and mortar, or other fire-proof material; and to provide for the removal of any building or any addition erected contrary to law.

SEC. 5. To purchase, or condemn and enter upon and take any lands within the Territorial limits of the city, for public squares, streets, alleys, parks, commons, cemeteries, hospital grounds, for workhouses, house of correction, or any other legitimate municipal purpose, and to enclose, ornament and improve the same, and to erect necessary buildings thereon; and for these purposes may levy and collect special taxes, not exceeding one-fifth of one per centum annually, on the taxable property therein.

To control all of such buildings, and all lands purchased or condemned under the provisions of this section, and of all streets, highways, squares, and other public grounds within its limits, established or appropriated to public use by authority of law, or which have been or may be hereafter dedicated to public use by any person or persons; and in case such lands are deemed unsuitable or insufficient for the purposes intended, to dispose of and convey the same; and the conveyances of such property, executed in the manner that may be prescribed by ordinance, shall be held to extinguish all rights and claims of said city, or the public, existing prior to such conveyance; but when such lands are so disposed of and conveyed, enough thereof shall be reserved for streets to accommodate adjoining property owners.

Lighting the city.

Tax for.

SEC. 6. To provide for the lighting of the streets, and furnishing the city with gas or other lights, and for the erection or construction of such works as may be necessary or convenient therefor; and to levy and collect for these purposes a special tax, not exceeding one-fifth of one per centum per annum, upon the taxable property within the limits of the city benefited by such lights, which limits shall be fixed by the city council each year before levying any tax authorized by this section, and such taxes shall only be assessed and collected from property within said limits.

Streets and sidewalks.

Sewers.

Special tax for.

SEC. 7. To provide for clearing, opening, graveling, improving, constructing, and repairing streets, highways and alleys, and sidewalks and gutters, and for the prevention and removal of all obstructions therefrom, or from any cross or sidewalks; also to regulate cellar ways and cellar lights, and sidewalks within the city; to provide for clearing the streets and for constructing sewers and cleaning and repairing the same; and to assess, levy and collect, annually a road poll tax, (not less than one nor more than six dollars), on every male inhabitant of the city between the ages of twenty-one and fifty years, excepting persons who are a public charge; also a special tax on property of not less than two, or more than five mills, per centum, annually, on the taxable property within the city; which taxes shall be expended for the purposes specified in this section except sidewalks.

94  
Sidewalks.

SEC. 8. The council, whenever it is deemed expedient to cause sidewalks to be constructed, repaired or kept in order, may, by ordinance, provide for the same. If any person owning real estate within the city shall refuse or neglect to build or repair said walks, according to the requirements and provisions of said ordinance, for sixty days after its publication, the council shall cause said walks to be constructed or repaired and pay for the same out of the general street funds; and the expense thereof shall be assessed on the real property along which said walks are built, and collected as other taxes are collected.

Health.

Drainage.

SEC. 9. To make regulations for preserving the health of the citizens, and to prevent the introduction of contagious diseases into the city; and for these purposes to remove persons affected with contagious diseases to suitable hospitals provided for the same, and to provide for their support; and to cause any lot of land within their limits, on which water at any time becomes stagnant to be drained or filled up; to regulate, control and enforce the building and cleaning of vaults within the city; and

in case of a failure or refusal of the owner of property <sup>same</sup> to comply with the requirements of any ordinance or resolution of the city council with reference to such matters, after such notice as in such ordinance or resolution may be prescribed, the work necessary may be done at the expense of the city, and the amount so expended shall be assessed as a tax upon such property, and shall be collected as other assessments.

SEC. 10. To provide for the survey of the blocks and <sup>Streets</sup> streets of the city, and for the making and establishing of the boundary lines of such blocks and streets and to establish the grades of all streets within the city, and to <sup>Grades</sup> lay off, widen, straighten, name, change, extend, vacate and establish streets, highways, and alleys, and all public grounds, and to provide for the condemnation of such real estate as may be necessary for such purposes; and to authorize and forbid the location or laying of tracks for railways and street railways on all streets, alleys, and <sup>Railways</sup> public places; but no railroad track can thus be located and laid down until after the injury to property abutting upon the street, alley, or public place upon such track, is supposed to be located and laid down, has been ascertained and compensated for in the manner hereinafter provided.

SEC. 11. To erect and maintain water works, or <sup>Water works by the city.</sup> to authorize the erection and maintenance of the same, for the purpose of furnishing the city with water; but no such works shall be erected by the city until a majority of two-thirds of the members of the city council shall vote therefor:

To construct, or authorize the construction of such water-works without the limits of the city, and to purchase the right of way for the same, and for the purpose of protecting and maintaining the same from injury and the water from pollution, the jurisdiction of the city shall extend over the territory occupied by said works, and all reservoirs, streams, trenches, pipes and drains used in and necessary to the construction, maintenance and operation of the same, and over the streams or source from which the water is taken, for five miles above the point from which taken, and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

SEC. 12. If the right to construct and operate such water works is granted to private individuals or corporations, it may make such grant to inure for the term of <sup>Water works by individuals as corporations.</sup> twenty-five years, and may authorize such individual or

Same.

company to charge and collect from each person supplied by them with water, such water rent as may be agreed upon between such individuals or corporation in building such work. And said city is authorized and empowered to enter into a contract with the individual, or corporation, or company, constructing such works, to supply the city with water for fire purposes, and for such other purposes as may be necessary for the health and safety thereof, and to pay therefor such sum as may be agreed upon between said contracting parties, and to condemn and appropriate so much private property as shall be necessary for the construction and operation of such water-works; and if the construction and operation of such water works is done by individual or private corporations, the city may confer by ordinance, upon such individuals or corporations, the said power to take and appropriate private property for such purposes, on paying damages therefor.

Tax for water works.

SEC. 13. To levy and collect a special tax, at the regular time of levying taxes of each year, not exceeding one-half of one per centum of the taxable property within said city, for the purpose of constructing such water-works; but no tax shall be levied for the purpose of aiding any private individual or corporation; and when such works shall have been constructed, the city shall have power to assess and collect, from time to time, in such manner as the city council shall deem equitable, from each tenement or other place supplied with water, such water rent as may be deemed reasonable; and at the regular time for levying taxes in each year, the city may levy and collect in addition to the tax already authorized by this section, a special tax on taxable property within the limits, sufficient with the water rents hereby authorized, to pay the expenses of running and operating such works; and if the right to build, maintain and operate such water works shall be granted to a private individual or corporation, and the city shall contract with such individuals or corporations for a supply of water for any purpose, the city shall levy and collect each year a special tax to pay said water-rent; *Provided*, that said taxes shall not exceed one-half of one per centum, annually, within the limits benefited by such works; which limits shall be fixed by the city council each year, before levying any tax authorized by this section; and said taxes shall only be assessed, levied and collected on property within said limits.

Tax for water rent.

SEC. 14. To regulate and prevent domestic animals



running at large, and to license, tax, regulate and restrain the keeping of dogs within its limits, and to authorize the distraining, impounding and sale of the same for the penalty incurred and cost of proceeding, or may authorize their destruction.

Restrain and control animals running at large.

SEC. 15. To regulate, license and tax all carts, drays, wagons, carriages, coaches, and omnibuses, and other vehicles kept for hire; and to fix the rates thereof; to license, tax, and regulate, or prohibit theatrical shows and other exhibitions; to license, tax, and regulate auctioneers, hawkers, peddlers, brokers, and pawnbrokers; to license, regulate, restrain, and to prohibit, for cause, drinking saloons, beer shops, breweries, or other places where intoxicating and other beverages are sold or disposed of in less quantities than one quart; but no license shall be required of apothecaries or druggists for the sale of wines, spirits, or malt liquors for medical purposes; to license, tax, and regulate wash-houses, and to prescribe and regulate the places for the same, and the persons who shall carry on the same; to license and tax hotels, livery stables, and wholesale and retail establishments of every kind and description; *Provided*, that no tax or license shall be imposed for the sale, inside its limits, of any natural products of the country, nor shall they be imposed upon wheelwrights, carpenters, blacksmiths, boot and shoe makers, tailors, milliners and dress makers, and other mechanical arts.

Regulate and license, in industries, saloons, etc.

SEC. 16. To establish and maintain a police, and to provide for the election and appointment of such police officers as may be necessary, who shall have full power to make arrests with or without warrants, within or without the city; to summons aid and to exercise all powers necessary and requisite for the prevention of crime, or apprehension of offenders; and in all cases where arrests are made for offenses tried under the general laws of the Territory before justices of the peace or other Territorial courts, such police officers shall be entitled to receive the same fees as sheriffs or constables, for the same service.

Police.

SEC. 17. To prevent injury or annoyance from anything dangerous, offensive, or unhealthy, and to cause any nuisance to be abated; to restrain and punish any disturbance, or any unlawful or indecent practices; to provide for the support and employment of vagrants and paupers; to suppress, prohibit, restrain, and regulate the use of opium and opium houses, disorderly houses, houses of ill-fame, or gambling houses; and to author-

Abate nuisances and restrain gambling, houses of ill-fame, etc.

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- Same.**      ize the destruction of all instruments or devices used for purposes of gambling or gaming; to regulate the transportation and keeping of gunpowder or other combustibles; and to provide or license magazines for the same; to prevent and punish fast or immoderate riding or driving upon the streets or public places; to regulate the speed of trains and locomotives on railways over the streets or within the limits of the city; to prevent any riots, noise or disturbance, or disorderly assemblages; to protect the property of the corporation, or its inhabitants, and to preserve peace and order therein.
- Cemeteries.**      SEC. 18. To establish cemeteries and improve the same, and to regulate the burial of the dead therein, and to prevent the burial outside thereof.
- Markets.**      SEC. 19. To establish and regulate markets, and to provide for the measuring or weighing of hay, coal and other articles of sale.
- Borrow money.**      SEC. 20. To borrow money on the credit of the city, for any purposes within the authority of the corporation; but the indebtednesses of the city shall not exceed in the aggregate the sum of twenty thousand dollars, and any debt or liability incurred in excess of said sum shall be invalid and void.
- Ordinances.**      SEC. 21. To adopt ordinances for the government of the city, and to carry into effect the power given by this act: to provide for the punishment of any violation of any ordinance of the city by a fine not exceeding one hundred dollars, or imprisonment for not more than thirty days, or both, or by a forfeiture or penalty, not exceeding one hundred dollars, and for the working of any one sentenced to such imprisonment or committed in default of the payment of any such fine, during the term thereof.
- Penal laws.**      SEC. 22. To establish and regulate the fees and compensation of all its officers except when otherwise provided. Said city shall have all other powers and privileges not herein specially enumerated as are incident to municipal corporations of like charter and degree, not inconsistent with the laws of the United States, or of this Territory, and as may be necessary for carrying into effect the provisions of this act, according to the true intent and meaning thereof.
- Pay of officers and general powers.**
- General laws of territory.**      SEC. 23. No general laws of the Territory shall have the effect to alter or amend this charter, or any of the provisions thereof, when inconsistent therewith, unless the act enacting said laws clearly expresses such intention by a reference to the said charter.

49

## CHAPTER III.

### GOVERNMENT.

SECTION 24. The power and authority hereby given to the city of Lewiston by this act, shall be vested in a mayor and common council, together with such other Council. officers as are in this act mentioned, or may be created under its authority.

SEC. 25. The common council shall consist of six Alderman. aldermen. They shall be elected for two years, and shall hold their offices until their successors are elected and qualified; *Provided*, that at the first annual election three of the six members shall hold their offices for one year only, and if such city shall be divided into two or more wards, the council shall make an equitable apportionment of the members holding for different terms, among the several wards, so that at each election there may be at least one member from each ward elected.

SEC. 26. For the purposes of the first election, and until further ordered by the council, said city shall be divided into two wards, as follows: All that portion lying Wards. west of a line extending from the southern boundary of said city, northerly along the center of Fifth street to the north boundary of the city, shall be known as ward number one; and all that portion lying east of said line, shall constitute and be known as ward number two.

SEC. 27. At the first election, there shall be elected First election. three members from each ward, for the full term of two years, *provided*, that at the first regular meeting after such election, the council shall make an equitable apportionment of the members holding for different periods among the several wards, and when such apportionment is made, the members to hold for two years shall be chosen by lot, in the presence of the mayor and council, in such alternate manner that at least one member from each ward may be secured for such period of two years; *Provided*, however, that the members of the council, elected under the present charter of said city, shall continue to hold their said office until the first election provided for in this act, and until their successors are elected and qualified.

SEC. 28. The Mayor shall be elected for one year, and Mayor. shall hold his office until his successor is elected and qualified.

SEC. 29. There shall be elected, as hereinafter provi-

ded, a marshal, clerk, attorney, treasurer, health officer, city surveyor, street commissioner, and assessor, who shall be officers of the municipal corporation.

The marshal and treasurer shall be elected by the qualified voters of the corporation, and hold their office for one year, or until their successors are elected and qualified.

The common council shall, annually, at the first regular meeting thereof after the qualification of the members thereof elected at each annual city election, elect by ballot a clerk, attorney, health officer, surveyor, street commissioner, and assessor, for the ensuing year, and until their successor is elected and qualified; and any qualified elector of said city may be elected to one or more of said offices; and the council may at any time remove any of said officers for malfeasance, inattention or incompetency.

The Justices of the Peace elected for the precinct in which the city is located, and residing within the city, shall have jurisdiction over all crimes defined and by (any) ordinance of said city, and of all other actions brought to enforce or recover any penalty or forfeit declared or given by any such ordinance, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinance, and to pronounce judgment in accordance therewith.

All civil or criminal proceedings before said Justices of the Peace, under and by authority of this act, shall be governed and regulated by the general laws of this Territory relating to justices of the peace, and to their practice and jurisdiction, and shall be subject to review in the district court of the proper district by certiorari or appeal, the same as other cases.

SEC. 30. No person is eligible to any office in said city, who at the time of election is not entitled to the privileges of elector according to the laws of this Territory, and who has not resided in said city for thirty days next preceding said election.

## CHAPTER IV.

### ELECTIONS.

General election.

SECTION 31. There shall be a general election for all city officers required to be elected under this act, on the second Monday in June of every year.

SEC. 32. No person is qualified to vote at any elec-

tion under this act who does not possess the qualifications <sup>Electors, quali-  
fications of.</sup> in Sec. 30 of this act for officers, and who, if under fifty years of age, has not paid either a poll or property tax, if any has been assessed, for the fiscal year then last past, such payment to be proven by the proper official receipt therefor, or other record evidence, except when for good cause such evidence cannot be produced it may be proven by the oath of the person offering to vote.

SEC. 33. That at all elections for city officers, the vote shall be by ballot.

SEC. 34. The clerk, under the direction of the council, shall give ten days' notice, by posting the same in at least two public places in each ward of the city, or by <sup>Notice of elec-  
tion.</sup> publication in some newspaper published in said city, of such general election, the officers to be elected, the place designated for holding the election, and the judges and clerks appointed to conduct the same.

SEC. 35. All elections shall commence at twelve o'clock M. and continue until six o'clock P. M. of the same day without closing the polls. If any judge of an election fails to attend and serve at the proper time, the voters of the ward then present may elect another in his place, and if any clerk fails to attend and serve at the proper time the judges of the election may appoint another in his place.

SEC. 36. Judges and clerks of election must possess <sup>Judges of elec-  
tion.</sup> the qualifications of voters in the ward where they act, but a mistake or error in this respect, or a failure to give notice of election as required by this act shall not invalidate any election otherwise legal. The judges of election and clerks shall make a full and complete return of the votes cast at any election, and sign the same, and deposit the same, within forty-eight hours after the day of said election, with the city clerk.

SEC. 37. Within ten days after any election, at any general or special meeting, the city council shall canvass <sup>Canvass of  
votes.</sup> the return thereof, and a written statement of said canvass shall be made and signed by the presiding officer of the council at the said canvass, and attested by the clerk and immediately filed with the clerk. Such written statement shall contain the whole number of votes cast at said election, the name given for any person for any office, and the names of persons elected to such office.

*Provided*, that if the requisite number of officers shall not be elected, by reason of two or more persons having an equal and highest number of votes for one and the same office, the council shall give notice to the several

The votes, how decided.	<p>persons so having an equal number of votes to attend at the council chamber at an appointed time, and the said council shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes, shall be deemed duly elected; and a certificate of election shall be duly issued to the person thus declared elected as hereinafter provided. Within two days after said canvass is filed, the clerk shall make and sign a certificate of election for each person declared thereby to be elected, and deliver the same on demand to the said person.</p>
Certificate of election.	
Council judge of qualification and election of its members.	<p>SEC. 38. A certificate of election is <i>prima facie</i> evidence of the matter therein stated, but the council is the final judge of the qualifications and election of the mayor, and its own members. A contested election for any office must be determined by the council according to the laws of the Territory, regulating the proceedings in contested elections for county officers.</p>
Term of office, when to commence.	<p>SEC. 39. The term of office of every one elected to office under this act, shall commence on the 1st day of July of each year. Any person elected to any office who shall fail to qualify by filing a bond, or taking the oath of office, or both, as is herein provided, on or before the said 1st day of July, after his election, shall be deemed to have declined said office; and said office shall become vacant, except in cases of contests, in which case such person must qualify within ten days from the determination of such contest.</p>
Qualify, how.	<p>SEC. 40. All persons elected under this act before entering upon the duties of his office, shall take and file with the clerk an oath to the following effect: I, A. B. do solemnly swear (or affirm) that I will support the Constitution of the United States, and the organic act of this Territory, and that I will to the best of my ability faithfully perform the duties of . . . . ., during my continuance in said office, so help me God, and file an official bond when required.</p>
General territorial laws.	<p>SEC. 41. All laws of this Territory regulating and governing general elections and proceedings, and matters incidental thereto, shall apply to and govern elections under this act, unless as herein otherwise provided.</p>

## CHAPTER V.

### VACANCIES IN OFFICE.

**SECTION 42.** An office becomes vacant upon the death, removal, or resignation of the incumbents, or a failure to qualify as required by law.

Any office may be declared vacant by the city council when the incumbent thereof shall have been absent from the city, without leave of the council first obtained, for the period of sixty days, excepting that the office of any alderman who shall neglect and refuse to attend the regular meetings of the council six consecutive times, without leave of the council first obtained, may be declared vacant by the council. Vacancies.

**SEC. 43.** A vacancy in any office shall be filled by the council at a regular meeting. Vacancies, how filled.

**SEC. 44.** An officer appointed to fill a vacancy shall fill said office until the next regular city election, and must within five days after being notified of his appointment by the clerk, qualify therefor, as in the case of an officer elected, or he shall be deemed to have declined and the office shall be considered vacant. Qualification of officer appointed.

## CHAPTER VI.

### ORGANIZATION AND POWERS OF THE COUNCIL.

**SECTION 45.** The city council shall have all the legislative powers granted by this act, and all other corporate powers of the city not herein or by some ordinance of the city conferred on some other officer. Legislative power.

**SEC. 46.** The council shall provide for the time and place of its regular meetings, at any of which it may adjourn until its next regular meeting, or to any intervening time, and it may be convened by the mayor or any two aldermen, at any time, upon a day's notice given to each member thereof in the city. Regular meetings.

**SEC. 47.** A majority of the members of the council shall constitute a quorum, but a less number may adjourn from time to time and compel the attendance of absent members. Quorum.

**SEC. 48.** The council may adopt rules and regulations for the government of the conduct of its members, and its proceedings. It may require of any of the city officers, such official bonds for the faithful discharge of their duties as they may deem expedient, and provide by or Government of council.



Same.	dinance for the giving, filing approval and prosecution of such bonds. It shall keep a journal of its proceedings, and on the call of any one of its members must cause the ayes and nays to be taken and entered in the journal upon any question voted upon. Its deliberations and proceedings must be public.
Punishment of members.	SEC. 49. The council may punish any member for disorderly conduct, at any meeting, or for refusing or neglecting to attend any meeting without sufficient cause; and may by a two-thirds vote expel a member.
Mayor, duties of.	SEC. 50. The mayor is ex-officio president of the council, and shall preside over its deliberations when he is present, but shall not vote, except in case of a tie in the vote of the members present and voting; in which case he shall have the casting vote. He has authority to preserve order, enforce the rules of the council and determine the order of business, subject to such rules and to an appeal to the council. In the absence of the mayor at any meeting the council must appoint one of their member president, to serve during the meeting or until the mayor attends.
Annual meeting.	SEC. 51. On the first secular day of July there must be a regular annual meeting of the council, and such meeting is appointed by this act, and no notice or call thereof is necessary.
Quorum.	SEC. 52. A majority of the whole number constituting the council is a majority within the meaning of this act, and not otherwise, unless expressly so provided. The concurrence of a majority of a quorum is a sufficient majority to determine any question or matter other than the final passage of an ordinance.

## CHAPTER. VII.

### THE MAYOR, HIS POWER AND DUTIES.

Mayor, duties of.	SECTION 53. The mayor is the executive officer of the corporation. It is his duty at the first regular meeting in July and January, to communicate by message to the council a general statement of the condition and affairs of the corporation; and to recommend the adoption of such measures as he may deem expedient and proper, and to make special communications to the council from time to time as he may think proper.
Approve bonds.	SEC. 54. He shall take and approve all official undertakings which the ordinances of the city may require from any officer, or any undertaking which may be re-

quired of contractors for the faithful performance of official duty, or of contracts, and approve the same and file immediately with the city clerk.

SEC. 55. He shall perform such other duties and exercise such other authority as may be prescribed by this act, any city ordinance, or law of the United States, or of this Territory. Other duties.

SEC. 56. Any ordinance which shall have passed the council shall, before it becomes a law, be presented to the mayor for his approval. If he approves the same he shall sign it; if not, he shall within ten days return it with his objections in writing to the council, who shall cause the same to be entered in the journal, and shall proceed to reconsider the same. If after such reconsideration two-thirds of the council shall vote to pass the same, it shall become a law. Veto power.

SEC. 57. During any temporary absence of the mayor from the city, or if he be unable to act, the council shall elect one of their members who shall be the acting mayor, and perform all the duties of such office during such temporary absence or inability, except as is otherwise provided by this act. Mayor pro tem

## CHAPTER VIII.

### THE POWERS AND DUTIES OF OTHER OFFICERS.

SECTION. 58. The city attorney shall represent the city in all suits or proceedings in which the city is legally interested, and give his advice and opinion in writing concerning any matter in which the city is interested, when required by the mayor or council; but the city may employ additional counsel when deemed advisable by the council. City attorney.

SEC. 59. It shall be the duty of the clerk to keep a fair and correct journal of the proceedings, and to file and keep all papers and books of the city council. The clerk is authorized to administer any oath required to be taken in connection with the duties of his office. Clerk.

SEC. 60. All demands and accounts against the city must be presented to the clerk with the necessary evidence in support thereof, and he must submit the same to the council, who shall by a vote direct whether the same shall be paid or any part thereof, as they may deem it just and legal. Accounts.

SEC. 61. When the council orders any demand or account to be paid, if money has been appropriated for

Warrant on  
treasury.

that purpose, and not otherwise, the clerk must draw a warrant upon the treasurer for the amount ordered paid, which warrant must be drawn on the special or general funds appropriated therefor, and be signed by the mayor and attested by the clerk.

Books of ac-  
count.

SEC. 62. The clerk must keep proper books of account, showing therein all sums appropriated, the date thereof, and out of what fund, the date and amount of all warrants drawn thereon, and to whom payable, and all such other matters and things as may be prescribed by ordinance, or proper and necessary to a correct understanding of the city finances.

Treasurer.

SEC. 63. The treasurer is receiver of taxes, and must receive and keep all money that shall come to the city by taxation or otherwise, and pay out the same upon the warrant of the mayor, attested by the clerk.

Account of  
treasurer.

SEC. 64. The treasurer must keep an account with the general fund and a separate account with each special fund that may be raised for any specific object; and when a warrant is drawn on any particular fund it can only be paid out of such fund.

Treasurer's re-  
port.

SEC. 65. The treasurer must make a report of the receipts and expenditures to the common council at the first regular meeting in the months of January and July of each year; which report shall be published in any newspaper published in the city.

Assessor.

SEC. 66. The assessor must, annually, make a correct list of all the property subject to taxation by the city, with the valuation thereof, and certify and return the same to the clerk.

Appeal from  
assessment.

SEC. 67. A person feeling himself aggrieved by any such assessment, either in the valuation or listing of the property, may apply in writing to the council to have such assessment revised, and if the council deem the same erroneous they must correct it. The party applying for such correction may be examined as a witness in relation to the matter if he desires it, or the council require it.

Manner of as-  
sessment.

SEC. 68. The assessment of property must be made in the manner prescribed by law for assessing property for territorial and county taxes: But the form of assessment roll, and the rule for ascertaining the ownership of property, and in whose name it may be assessed, may be prescribed by ordinance, and the time of making such assessment and the return thereof, and of applying to the council for a revision thereof, must be prescribed by ordinance.

SEC. 69. The marshal is a peace officer, and must execute all process issued by the justices of the peace of the city, or directed to him by any magistrate of the Territory. He must attend regularly upon the courts of said justices of the peace, and meetings of the council. He has power, by and with the approval of the council, to appoint one or more deputies, who shall possess the same power. He shall make arrests for breach of the peace, or for commission of a crime within the city limits, with or without warrant, as a peace officer may do under the laws of the Territory. He shall exercise a vigilant control over the peace and quiet of the city, and he is the keeper of the city prison, unless otherwise prescribed by ordinance. Marshal.  
Deputy.

SEC. 70. The marshal must keep a correct record of all arrests made by him or his deputies, showing the time, cause or complaint upon which said arrest was made, and must make a full and complete report in writing each month to the city council. Marshal's  
record.

SEC. 71. The justices of the peace of the city shall, before exercising any of the functions of his office, as such, give a bond to the city in such sum and such conditions as the council may require. He must keep a proper account of all fines, costs or other moneys received by him when acting under and by authority of this act, and he must pay to the treasurer monthly all such moneys, and take duplicate receipts therefor, one of which he must file with the clerk. Justice of the  
Peace.  
Bonds.

SEC. 72. The powers and duties of all other officers of the city shall be as prescribed by ordinance. Other officers.

SEC. 73. The official books and papers of all the city officers are city property, and must be kept as such by such officers during their continuance in office, and delivered to their successors. Official books.

SEC. 74. The official books and papers of any officer mentioned in this act may be inspected at any time by a committee of the council appointed for that purpose. Inspection of  
books.

## CHAPTER IX.

### ORDINANCES.

SECTION 75. The style of every ordinance shall be: "The City of Lewiston does ordain as follows." All ordinances and resolutions or rules for the appropriation or payment of money, shall require for their passage and adoption the concurrence of a majority of all the mem- Ordinance.

Same.

bers of the council. No ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section revised or amended, and the ordinance or section so amended shall be repealed.

Ordinances recorded and published.

SEC. 76. All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signature of the presiding officer and the clerk; and all those of a general or permanent character, and those imposing any fine, penalty or forfeiture, shall be published in some newspaper of general circulation within the city, and it shall be a sufficient defense to any suit or prosecution for such fine, penalty or forfeiture, to show that no such publication was made, and no such ordinances shall take effect and be in force until the expiration of five days after they have been published.

## CHAPTER X.

Road poll tax.

SECTION 77. The assessor shall, annually, make out a list of the names of all persons within the city liable to pay a road poll tax, as provided in this charter; and at the time of making such list the assessor shall demand from each person the road poll tax levied for said year by the council, and if the said road tax is then paid the assessor shall mark the same paid on said list, and give to the person so paying a receipt therefor, and the said list shall be returned to the council with the return of his assessment of property, and he shall pay over to the city treasurer the money received by him and take his receipt therefor, and file the same with the city clerk. The said poll tax list shall be given to the city marshal, and he shall at once proceed to collect the unpaid poll road tax thereon from the persons named on said list. The marshal shall also place upon said list the names of all persons found in said city liable to pay said poll tax who shall fail to produce a receipt for the payment of a road poll tax for the current year. He shall demand the amount due from each person named on said list when assessable, and shall proceed at once to collect the same from any person who shall fail to pay the same when so demanded, by levy and sale of personal property of such person so delinquent, or sufficient thereof for that purpose, and to pay the expenses of the levy and sale; *Pro-*

*vided*, that the council may allow any person to pay <sup>same.</sup> said poll tax in work upon the streets of the city, under the direction of the street commissioner, at the rate of two dollars per day.

Any person having men employed, either for himself or company, shall, when required, provide a list of the names of all such persons so employed liable to pay such road poll tax, and if such employer or his agent shall fail to furnish such list, or shall furnish an incomplete or otherwise incorrect one, then such employer or company shall be liable to pay such road poll tax of his or their employees, and shall pay the road poll tax due by such men so employed, on being notified in writing by the marshal.

SEC. 78. Whenever any special or general tax has been levied as provided, and authorized by chapter two of this act, every part thereof shall bear interest at the rate of one and one-half per cent. per month, from the time it becomes delinquent until paid, and shall be a lien from said date, upon any real property owned by the party assessed. <sup>Interest on delinquent taxes.</sup>

SEC. 79. The city council must provide by ordinance within what time all taxes levied, as provided and authorized by the provisions of chapter two of this act, may be paid to the treasurer; and all taxes not paid within such time are thereafter delinquent taxes, and shall be collected as such with ten per cent. per annum additional. <sup>Delinquent taxes.</sup>

SEC. 80. Within five days from the expiration of the time limited for paying taxes to the treasurer, the treasurer must return the tax roll to the council, distinguishing thereon the taxes paid and those remaining unpaid. <sup>Delinquent tax roll.</sup>

SEC. 81. The council must thereafter order the city clerk to deliver the said delinquent tax roll to the city attorney, with directions thereon requiring said attorney to commence civil actions against all persons whose taxes are marked delinquent thereon within ninety days after the said delinquent roll is delivered to him; *Provided*, that the council may by resolution, for cause, except any whose names appear thereon as delinquent from said civil action. <sup>Civil actions to collect taxes.</sup>

SEC. 82. The city attorney shall give notice in a newspaper of general circulation in said city, that said delinquent tax roll is in his hands for collection, and shall give thirty days after the first publication of said notice before commencing action for the payment of said taxes.

At the expiration of said thirty days, the said attorney

Same.

shall proceed to collect such taxes with interest and costs, as remain delinquent according to the territorial laws and regulations for the collection of delinquent taxes. After action commenced, on settlement of the same before trial, there shall be taxed as cost an attorney fee of five dollars; and on final judgment there shall be taxed as costs in addition to other costs an attorney fee of ten dollars.

SEC. 83. If personal property be not found whereon to levy the execution issued on the judgment obtained in said action, or if levied upon it is not sufficient to pay the judgment, levy shall be made upon the real property of the person, firm, or corporation against whom the tax is levied or charged, or sufficient thereof to satisfy said execution, including interest, fees of officers, and all expenses of sale.

SEC. 84. In case of delinquent tax levied upon real property in the name of an owner unknown, the execution shall be executed by levying upon each lot or part thereof of such property, for the tax levied thereon and selling it separately.

SEC. 85. All taxes heretofore levied by the city of Lewiston and remaining unpaid and delinquent may, by order of the council, be collected from the person, firm or corporation, whether known or unknown, against whom the same was charged or levied by execution in the same manner, and with the effect provided in this chapter for the collection of delinquent taxes.

SEC. 86. When real property is sold for delinquent taxes, the person executing the execution must immediately make a deed for such property to the purchaser, stating therein that the same is made subject to redemption as provided by law, and such deed shall convey to the purchasers (subject to redemption) all the estate or interest therein of the owner whether known or unknown.

SEC. 87. Real property sold for taxes, as provided in this chapter, may be redeemed by the owner or his successor or grantee in interest, or any person having a lien thereon, either by judgment, decree, mortgage or otherwise or any part thereof, separately sold, within two years from the date of the deed therefor, by the payment of the purchase money together with interest on the purchase money from the date of the sale to the time of payment, at the rate of one and a half per cent. per month, and also the amount of any and all taxes which the purchaser may have paid on said land with the same interest thereon. A redemption discharges the property



from the effects of the sale, and from the tax levied for which it was sold. If made by the owner or grantee or successor in interest the estate in the property is thereby restored to such owner, grantee, or successor in interest, but if made by a lien creditor the amount so paid shall form a part of his lien and bear like interest.

SEC. 88. In the sale of real property for delinquent taxes, only so much thereof shall be sold as is necessary to pay the required amount. In said sale the said real property shall be sold in pieces and parcels most likely to sell for the amount necessary to pay said taxes and costs, and interests, and legal charges; and the person offering to pay the said amount for the least amount of said real property shall become the purchaser and receive the deed for the amount so purchased.

SEC. 89. Personal property sold under the authority of this Chapter, shall be sold to the highest bidder for cash, and the bill of sale therefor shall express the amount for which the same was sold, and the return of the person executing the warrant or execution must specify such consideration and the name of the purchaser.

SEC. 90. The council may provide by ordinance within what time a warrant for the collection of delinquent poll taxes must be returned, and may order an alias warrant to issue for the collection of any such taxes, not made on a previous one. All costs and charges for the collection of delinquent poll taxes must be made on a warrant, and collected as a part of the tax. The council may provide by ordinance the fees and compensation for collecting delinquent taxes; but the same shall in no case be paid out of the treasury of the city.

SEC. 91. All property subject to levy on execution is subject to levy upon a warrant for the collection of delinquent taxes, or execution in case of judgment, and also all property subject to assessment for taxes as provided for by this Chapter whether the same be exempt or not. The city marshal shall, upon entering upon the discharge of his duties as tax collector, give a bond to the city in the sum fixed by the council, conditioned for the faithful discharge of his duties as collector, and that he will pay over all moneys collected by him as required by law.

## CHAPTER XI.

## MISCELLANEOUS PROVISIONS.

SECTION 92. The city of Lewiston is not bound by any contract, or in any way liable thereon, unless the same is authorized by a city ordinance, and made in writing, and by order of the city council signed by the clerk, or some other person in behalf of the city. But an ordinance may authorize any officer, or agent of the city, naming him, to bind the city without a contract in writing for the payment of any sum of money not exceeding fifty dollars.

794 SEC. 93. The city of Lewiston shall be liable to any one for any loss or injury to person or property growing out of any casualty, or accident happening to any such person or property on account of the condition of any street or public ground therein: But this section does not exonerate any officer, of such city, or any other person from such liability when such casualty, or accident is caused by the willful neglect of a duty enjoined upon such officer or person by law, or by gross negligence, or willful misconduct of such officer, or person in any other respect.

SEC. 94. No money shall be drawn from the city treasury but in pursuance of an appropriation for that purpose made by an ordinance; and an ordinance making an appropriation of money must not contain a provision upon any other subject, and if it does, such ordinance, as to such provisions, shall be void, and not otherwise.

SEC. 95. A member of the council for words uttered in debate therein shall not be questioned in any other place.

SEC. 96. The fiscal year of the city shall commence on the first day of July and end on the last day of June of each year.

SEC. 97. In any action, suit, or proceedings, in any court, concerning any assessment of property, or levy of taxes, authorized by this act, or the collection of any such tax, or proceeding consequent thereon, such assessment, levy, consequent proceeding, and all proceedings connected therewith, shall be presumed to be regular and duly taken until the contrary is shown; and when any proceeding, matter or thing is by this act committed, or left to the discretion of the council, such discretion or

judgment, when exercised or declared, is final, and cannot be reviewed or called in question elsewhere.

SEC. 98. The city council is hereby authorized to grant the right to use the streets of said city for the purpose of laying gas pipes, intended to furnish the inhabitants of said city with light, to any person or association of persons for a term not exceeding twenty-five years; and the council may adopt such rules and regulations in granting such exclusive right as they may think proper, and as shall not be inconsistent with law.

SEC. 99. In making a deed for real property sold for delinquent taxes, it is not necessary to recite or set forth the proceedings prior to the sale, but it is sufficient, if it substantially appear from such deed, that the property was sold by virtue of an execution duly issued on judgment for a delinquent tax and the amount thereof, together with the date of the sale, and the amount paid therefor by the purchaser.

SEC. 100. The mayor and aldermen are not entitled to, and shall not receive any salary or compensation for their official services.

SEC. 101. All real property within the limits of the city of Lewiston not laid off in blocks at the time of making any assessment authorized by this act, must be assessed at the cash value per acre or fraction thereof, as the case may be.

SEC. 102. The city council may divide the city into not less than two nor more than three wards, and shall apportion the members of the city council to be elected in each, and provide the places for holding elections in each, and appoint officers for conducting the same.

SEC. 103. When the grade of any street, highway or alley shall have been established by authority of the city of Lewiston, and any person or persons shall have built, or made improvements on such street, highway or alley, and the city shall afterwards change the established grade, or shall change the boundary line of any block, street, highway or alley, in such manner as to injure or diminish the value of the property which shall have been improved, the city shall pay to the owner or owners of the property so injured, the amount of such damages, and when the parties interested are unable to agree with the city council as to the amount so to be paid, the same shall be assessed by three persons, one of whom shall be appointed by the Mayor, one by the owner or owners of the property, and one by the two appointed; or in case of their disagreement, by the city council. Said ap-

praisers shall be sworn to faithfully execute their duties according to the best of their ability. They shall view the premises and receive any legal evidence, and may adjourn from day to day, but shall make their report within thirty days from the time of their appointment.

They shall assess the damage sustained over and above the additional value of the property, by reason of the change or improvements. They shall sign their report and deliver the same to the clerk of the District Court of the district embracing the city, and if no objection is made thereto, in the manner hereinafter prescribed, within twenty days thereafter, the assessment shall be final, and the city shall pay the amount so assessed; and upon filing a precept therefor the party entitled may have a judgment entered therefor. If the damage so assessed be excessive or insufficient, the clerk shall, upon filing a written precept therefor, by the city or any person aggrieved, within said twenty days, enter the case upon the trial docket for the next term. The party claiming damages shall be the plaintiff, and the city shall be the defendant. The usual pleadings in a civil action may be filed in such special pleadings as the Court shall allow, and the issues thus formed shall be tried as other civil actions. The costs shall be taxed against the city only when the judgment is for a larger amount than was awarded by the appraisers; or the same has been tried at the instance of the city for the purpose of reducing the amount of damages, and the damages, are not so reduced, otherwise the costs shall be taxed against the parties claiming damages.

SEC. 104. The city shall have the power to regulate the running of ferries within the city limits, and to license the same, and to build and maintain bridges or ferries across the Clear Water and Snake rivers; and for the purpose of building and maintaining such bridges or ferries the city may purchase the right of way beyond its limits, and expend money in the constructing and maintaining such bridges and ferries outside the city limits, and the jurisdiction of the city shall extend beyond the city limits so far as such bridges or ferries, or the approaches thereto may extend; *Provided*, that the city shall have no authority to expend money for said purposes on ferries which do not run to or from some point within the city, or on bridges, some portion of which is not within the city limits.

SEC. 105. In all cases where private property is condemned, or taken for public or private use, or by au-

thority of this charter, the city or the party for whom it is taken shall pay a fair compensation therefor to the owners of such property, and when such owners and the city council, or parties interested, are unable to agree as to the amount of such compensation, the same shall be assessed and determined in the manner provided by the general laws of this Territory relating to the mode of proceeding to appropriate lands by private corporations.

SEC. 106. The city of Lewiston shall have the right to commit any person or persons for violating any of the ordinances or laws of the city of Lewiston, to the county jail: until the erection of a city jail. The compensation for keeping city prisoners in said county jail shall be the same as allowed for keeping prisoners in said county, and shall be a charge against said city.

SEC. 107. All acts and parts of acts that are inconsistent with the provisions of this Charter, are hereby repealed.

SEC. 108. All city ordinances passed in pursuance of previous acts or charters, and in force when this act takes effect, and not inconsistent therewith, shall be and remain in full force after this act takes effect thereafter, until repealed by the city council; and all rights vested or liabilities incurred under any former charter of said city of Lewiston, or any ordinance of said city when this act takes effect, shall not thereby be lost, impaired, or discharged.

SEC. 109. This act shall take effect and be in force from and after its passage.

Approved February 9, 1881.

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## LEWISTON—CHARTER.

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### AN ACT

SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT TO AMEND THE CHARTER OF THE CITY OF LEWISTON," APPROVED FEBRUARY 9, 1881.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. The City Council of the City of Lewiston, in addition to the powers conferred upon them by the

City council  
authorized to  
lease city  
property.

act to which this is supplementary, shall have power and are hereby authorized to sell or lease the property of said city; also to lease the water-front to any person, steam-boat or railroad company, for the purpose of erecting warehouses, wharves, wharf-boats, or for any other purpose which they may deem proper; *Provided*, that said city council shall, in any such lease, or leases, reserve the right to fix the rate of toll or wharfage.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## GRADED SCHOOLS IN CITY OF LEWISTON.

AN ACT,

TO PROVIDE FOR THE ESTABLISHMENT AND MAINTENANCE OF GRADED SCHOOLS IN THE CITY OF LEWISTON.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Organization of  
independent  
school district,  
No. 1 Nez  
Perce county.

SECTION 1. That portion of Nez Perce County in the Territory of Idaho, comprising the city of Lewiston and the school districts attached thereto, described as follows, to-wit:

Boundaries.

Commencing at the junction of Snake and Clearwater rivers, and running thence easterly to the west line of the Nez Perce Indian Reservation, thence southerly to the northeast corner of section twenty, of township thirty-five, north of range four, west; thence west on said section line to Snake river, and thence northerly along said river to the place of beginning, is hereby organized and established as an independent school district number one, with the powers hereinafter specified.

Legal voting  
therein.

SEC. 2. All inhabitants of said district, male and female, over the age of twenty-one years, belonging to either of the classes mentioned in section one of an act entitled "An Act relative to elections," published in the compiled and revised laws of Idaho, 1875, page 684, and not prohibited by section two of said act, shall be eli-

6x 653

amended  
12 July 1884  
13 Dec 1885-1886  
1109 p. 43

gible to office in said district, and shall be entitled to vote at all elections for district officers, and on all subjects and questions submitted to a vote of the electors of said district, at any and all elections held for such purposes.

SEC. 3. The electors of said district shall assemble at the school-house in the city of Lewiston, on the third Wednesday of May, A. D. 1881, and shall then and there choose by ballot five directors of schools of said district, one of whom shall serve one year, two for two years, and two for three years, the time that each shall serve to be designated on the ballot; and annually thereafter, on the third Monday of May, in the same manner, and at such place in said district as the Board of Education shall designate and provide, one or two directors, as may be necessary, to succeed the director or directors whose term of office is about to expire, shall be elected, and each of said directors shall serve for the term of three years, and until their successors are elected and qualified. The term of office of said directors shall commence on the first day of July next succeeding the day of their election. Each director so elected shall file in the office of the clerk of the district his written acceptance of said office prior to the first day of July next succeeding the day of his election, and a failure to file said written acceptance shall be deemed a refusal to serve, and it shall thereupon be the duty of the directors holding over, to fill such office by appointment until the next annual meeting, and until their successors are elected or appointed and qualified.

To elect five directors on 3d Wednesday of May 1881.

Annual election on 3d of May.

Term of office of directors 3 years.

Vacancy by not qualifying, how filled.

SEC. 4. Said directors and their successors in office shall be a body corporate by the name of the Board of Education of the city of Lewiston, and as such and by such name, shall have perpetual succession. They shall receive all moneys and other property accruing to said district or to said city, or to any part of the same, for the use and benefit of the public schools therein, and succeed to all the rights, and to be subject to all the liabilities of the same.

Incorporation of board of education.

The said board shall be capable of contracting and being contracted with, suing and being sued, and shall also be capable of receiving any gift, grant, bequest or devise made for the use of the public schools of said district, and of said city, under any law of the Territory, for the use of public schools therein.

Liability.

SEC. 5. Said board shall, on the 1st day of July, A. D. 1881, succeed to all the rights of the board of trustees of the districts included within the limits of said

Directors to enter upon and assume duties July 1, 1881.



independent school district, and all moneys and property belonging to said districts shall be delivered to said board of education on demand by the person or officer having possession or control of the same.

Office of trustees of old districts vacant on and after July 1st, 1881.

On the 1st day of July, A. D. 1881, the office of those elected and serving as trustees of said districts shall become vacant, and the said board of education shall assume and thereafter exercise full control and management of the school property and common schools of said district.

Annual meeting of board of education July 1st of each year.

SEC. 6. Said board of education shall, on the 1st day of July, A. D. 1881, and annually thereafter, unless said day occur on Sunday, or a legal holiday, and in that case on the second day of said month, meet and organize, by choosing from their number a president and clerk, who shall hold the office for one year, and until their successors are elected and qualified. Said board may also elect by ballot a tax collector for the district, who shall hold his office for one year from the 1st day of July of each year. A superintendent, who shall hold his office during the pleasure of the board, and the superintendent and clerk shall receive such compensation for their services as the board may determine. The superintendent shall be ex-officio a member of the board of education, but not entitled to vote therein. The board may for satisfactory reasons, remove any member or officer of the board, and fill the vacancy, as provided by section nine; *Provided*, that no member shall be removed except at least four members of the board, at a meeting, of whose object, time and place, said member shall be duly notified.

Members of board, how removed.

Who to receive compensation.

SEC. 7. No other member of said board shall receive any compensation, except the clerk and superintendent.

Quorum.

SEC. 8. Three members of said board shall constitute a quorum, for the transaction of business at any meeting.

Vacancy of board filled by the board.

SEC. 9. In case of a vacancy the board of education shall have the power to fill the same by appointment until the next annual district election, when the electors of said district, may chose a suitable person to fill the remainder of said term; *Provided*, the clerk of said board shall give notice of said vacancy as required in other cases.

Duties of superintendent.

SEC. 10. The superintendent shall visit the schools of the district, and report their condition to the board, as often as they require. He shall superintend the grading of the schools, and examination for promotion and shall per-

form such other duties as the board may prescribe. He shall also make the Territorial superintendent of public instruction such reports as may be required through the county superintendent of schools, or directly report to the Territorial department of education.

SEC. 11. The superintendent, tax collector, clerk, and president, shall file in the office of clerk of the district their written acceptance of the office as such. The President shall preside over all meetings of the board, when present. In his absence a President *pro tempore* may be chosen. He shall sign all orders drawn upon the treasurer of the district to be paid by him, and perform such other duties as the board may prescribe.

Officers to file acceptance.

Duties of president of board.

SEC. 12. The clerk shall act as clerk of the district and of the board of education when present. In his absence, inability or refusal to act, a clerk *pro tempore* may be chosen. He shall notify in writing all persons elected or appointed to any office in the district within five days after the election or appointment; give personal notice to each of the directors of the district of special meetings of the board of education, on the request of the president or any two members thereof; and give notice of all special meetings of the electors of the district, and the object of the same, at the time and in the manner prescribed by this act. He shall keep a record of the proceedings of all district meetings, and of the meetings of the board of education, and of all reports made by him to the county or Territorial superintendent of public instruction, and to the city council of the city of Lewiston.

Duties of clerk.

Notify persons elected to office.

Call meetings of the board and district.

Act as clerk of district meetings and of the board of education.

He shall make all reports to the county and Territorial superintendent of public instruction, and to the said city council required by law to be made. He shall keep an account of the expense of said district, and a correct and full list of the property of the district. He shall, on the order of the board of education, draw and sign orders for the payment of money on the treasurer of the district, stating in every such order the consideration for which it was drawn and the name of the person rendering such consideration, and the particular fund upon which it is drawn, and after said order is signed by the president of the board, and not before, deliver the same to the party entitled thereto, and take his receipt therefor. He shall, within ten days after the assessment roll of taxable property in the county has been filed and inspected by the board of equalization, at their first meeting in each year, and from time to time thereafter, when-

Reports.

Draw orders.

Procure assessment, roll of district.

ever changes shall be made by the board of equalization in said roll, procure from the county auditor a certified duplicate of the taxable property in said school district, and file the same in his office, and notify the board of education that said duplicate is on file. He shall thereupon, under instruction of the board of education, compute and specify the amount of tax due from each taxpayer in said district, specifying the purpose for which said tax is levied, and deliver the tax list thereof to the district tax collector on or before the third Monday in September of each year. He shall keep all books, records and papers belonging to his office and deliver the same to his successor, and perform such other duties as the board of education may prescribe.

Compute tax.

Duties of tax collector.

Give bond.

SEC. 13. The tax collector of said district shall, before entering upon the duties of his office, execute to the board of education a bond in double the amount of taxes, as nearly as can be ascertained, (the amount to be determined by the board of education) which will come into his hands as said collector within the fiscal year, with not less than two sureties, to be approved by the board of education, and conditioned for the faithful discharge of his duties as such collector, and file the same with the clerk of the district. In case of a breach of conditions of said board, the board of education shall cause an action to be commenced thereon in the name of said board, and the money recovered thereon shall be applied to the use of the district. He shall receive the school tax list from the clerk of the district when prepared, and give his receipt therefor.

Collect tax.

Cause, commencement of suits for delinquent taxes.

He shall, immediately upon the receipt of said tax list, publish a notice for two weeks in a newspaper published and having general circulation in said district, or if there be no paper published in said district, then, by posting notices in at least five of the most public places in said district, stating that the school tax levied by the board of education, giving the date of the levy and the rate, is now due and payable, and that the law will be enforced in the collection of the same; and the tax collector shall have the same power to enforce the collection of said tax as is given to the county assessor on personal property, and district attorneys on real estate, in the collection of Territorial and county taxes. He shall cause suits to be commenced for the collection of delinquent taxes in the name of the district, in any court of competent jurisdiction in the district or county, as other civil suits are brought for the recovery of money.

All taxes remaining unpaid on the 1st day of December shall be declared delinquent, and five per cent. shall be added thereto. Taxes become delinquent December 1st.

The tax collector shall, on the 1st day of December of each year, prepare a list of taxes remaining unpaid, and by certificate endorsed thereon declare the same delinquent, and file a duplicate of said delinquent list with the clerk of the board of education, together with a written statement of any taxes thereon that are not collectible, and the reason why said taxes cannot be collected. File delinquent list with the clerk.

He shall at the same time file with the district attorney a triplicate of said list, with a written request endorsed thereon, that actions be properly commenced for the collection of such delinquent taxes as are designated as collectible. And district attorney.

He shall pay to the treasurer of the district on the first day of each month, and at such other times as the board of education may direct, all taxes collected by him, and take duplicate receipts therefor. He shall report to the board of education at the expiration of each fiscal year, and at such other times as said board may require, all taxes collected by him during said year, and the amount paid to the district treasurer, and the amount uncollected, and the reasons why the same are not collected, and file said report with duplicate receipts for the amount paid to the treasurer, with the clerk of said board. Pay taxes collected to treasurer on 1st day of each month. Report. Report to the board delinquent taxes collectible and uncollectible.

He shall make personal application to the tax payers, when accessible, for the payment of said tax before the same becomes delinquent. Makes personal application for taxes.

If the tax collector fails, neglects or refuses to perform his duty in regard to the collection of said taxes, or in causing actions to be commenced for the collection of delinquent taxes, the board may remove him, or cause said action to be commenced by a resolution of the board, delivered to the district attorney. May be removed.

The tax collector shall receive for his services five per cent. of all taxes collected by him. Compensation.

He shall at the expiration of his term of office deliver all books and papers belonging to his office to his successor.

SEC. 14. It shall be the duty of the district attorney to enforce collection of delinquent taxes of the district, by civil actions commenced in the name of the district, in the same manner as is by law provided for the collection of delinquent county and Territorial taxes. He shall, upon the filing in his office of the triplicate delin- District attorney's duties.

Same.

quent tax list, by the tax collector, and a written request of the tax collector of the district, promptly commence actions against such delinquents, as the tax collector shall indicate in said written request, and without unnecessary delay prosecute said actions to judgment, and enforce the collection of said taxes. Said taxes, when collected on said action, shall be paid to the tax collector and by him to the district treasurer as in other cases.

The said attorney shall, within sixty days after the receipt of said delinquent tax list, and at such other times as the board of education may require, make to said board a written report of his prosecutions for the collection of said delinquent tax, and the amount collected and paid to the tax collector, and the reasons why any of said tax, if any there be, remain uncollected.

Liabilities.

He shall be held responsible on his official bond for the faithful discharge of his duty as prescribed in this section, and shall receive such compensation for his services as is by law allowed to the district attorney in the collection of county and Territorial delinquent taxes.

Compensation.

SEC. 15. It shall be the duty of the county auditor of Nez Perce county within ten days after the assessment roll of taxable property in said county has been filed, for each year, and inspected by the board of equalization at their first meeting in each year, to prepare from said roll an assessment roll of taxable property in said district, and certify the same on blanks, to be provided by said board of education, and deliver the same on demand to the clerk of said board of education, to be filed in the office of said clerk; and thereafter, when changes are made by the board of equalization in the assessment of taxable property of said district, the said auditor shall furnish the clerk of the board of education in like manner, on demand, a certified list of said changes, to be filed in the office of said clerk.

Make a list of taxable property in District.

Keep fund's separate.

The county auditor and county treasurer of Nez Perce county, shall keep a separate account of the funds received from the property tax collected by order of the board of County Commissioners, and which shall be designated the Nez Perce county property tax, general school fund, and a separate account of all other general school funds received, which shall be designated the Nez Perce County miscellaneous general school fund. The school superintendent of said county, shall at such times, and in such manner as is provided by the common school law, apportion said miscellaneous school fund among the several school districts in the county, includ-

ing said independent school district, number one; and the fund so apportioned [to] said independent district shall be subject to the order of the board of [education] in the manner provided in the general school laws. The county superintendent shall receive such compensation for his services as is provided for in the general school law, and to be drawn by order of the board of County Commissioners from the miscellaneous general school fund of the county, if there be sufficient money in said fund, otherwise the balance shall be paid from the property tax general school fund. Compensation.

SEC. 16. The treasurer of the city of Lewiston shall be Treasurer. ex-officio treasurer of said school district. Before entering upon the duties of his office he shall execute to said board of education a bond in double the amount of money as nearly as can be ascertained (the amount to be determined by said board) which shall come into his hands, as treasurer of said district during his term of office, with not less than two sureties, conditioned for the faithful discharge of his duties as treasurer of said district; said bond to be approved by said board, and file Bond. the same with the clerk of said board. In case of any breach of the conditions of said bond, the said board shall cause an action to be commenced thereon in the name of said board, and the money recovered thereon shall be applied to the use of said district.

The said board may require said treasurer to give additional security from time to time, and if he fails to give sufficient security when required, said board may declare his office as treasurer of said district vacant, and fill the vacancy by appointment. Duties.

Said treasurer shall receive all money due and belonging to said district, and pay all orders drawn upon him, signed by the clerk and president of the board, paying such order only on the particular fund upon which it is drawn; and shall keep an accurate, detailed and separate account of each fund coming into his hands, and paid out by him as said treasurer, in books provided for him for that purpose, by the board of education.

Said treasurer shall, at the expiration of his term of Report. office as treasurer of said city, and also at the expiration of the fiscal year of said district, file with the clerk of said board, a report in writing, signed by him, containing a statement of all moneys received by him during the fiscal year, and of all his disbursements as said treasurer. Said report shall be examined by the board at its annual meeting or within ten days thereafter, and the treasurer



Same.

shall exhibit, at said examination, his vouchers for all his disbursements, and if said statement is found to be correct, the board shall approve the same by resolution entered on the records of the board. Said treasurer shall also make from time to time, such statements of the business of his office as shall be required by the board.

Records and books.

He shall keep all records, books and papers belonging to his office, and deliver the same to his successor in office upon demand. He shall pay to his successor in office upon demand, after his successor has given bonds as hereinbefore prescribed, all money and property in his hands belonging to said district, and perform such other duties as may be ordered by said board.

Compensation of treasurer.

The treasurer shall receive such compensation, for his services, out of the school funds, as is provided and paid to him as city treasurer by said city, for like services.

Meetings of board.

SEC. 17. Said board may hold stated meetings at such times and places in said district, as they may appoint. Special meetings thereof may be called by the president, or by any two members, on giving one days notice of the time and place of the same, and said board, by resolution, may direct the payment of all moneys that shall be paid out of the treasury, and no money shall be paid, except in pursuance of such resolution, and on the written order of the clerk countersigned by the president of the board.

Buildings.

SEC. 18. Whenever said board of education deems it necessary to purchase or erect school buildings for said district, or to purchase sites therefor, they shall submit to the city council of the city of Lewiston, a proposition to levy a tax, or issue the bonds of the district for the necessary amount of money for that purpose. They shall specify in said proposition a general description of the proposed buildings, or the sites desired, and the maximum amount of the estimated cost thereof. They shall also specify therein whether they desire to raise said amount by tax or by issuing bonds of the district. If they desire to issue the bonds of the district therefor, they shall specify the terms and conditions of said bonds. It shall be the duty of said city council, within thirty days after said proposition has been submitted to them, to approve or disapprove of said proposition, and notify the board of education by a resolution adopted by said council of their action thereon. If the city council disapprove said proposition, or refuse, or neglect to take action thereon, then and in that case, within ninety days after the expiration of the thirty days in which

Taxes for.



time the city council should have taken action on same. said proposition, the board of education may call a special meeting of the qualified voters of said district, and appoint judges of said election, and submit to them the said proposition, as it was submitted to the city council, and the said voters shall by a majority vote, by ballot, approve or disapprove of said proposition. The board shall publish a notice of said special meeting, by publishing the same for two weeks prior to said meeting, in a newspaper published, and of general circulation in said district, and specify in said notice the time and place of said meeting and the object thereof. If the city council, or the said voters, shall approve of said proposition, they shall certify the same to the board of education, by a resolution of the council, or a certificate of the vote of the meeting signed by the president or clerk of the meeting, and the judges of election. Upon the approval of the proposition to levy a tax or issue the bonds of the district, for the proposed amount, the board of education may proceed to levy and collect [the] tax for said purposes on the taxable property in the district, not exceeding ten mills on a dollar of the assessed value of said property. The said board may levy and collect a tax, not exceeding said rate, on said property for successive years; *Provided*, that the total amount thus levied and collected does not exceed the maximum amount approved by the city council, or by the votes of the voters of the district. If the proposition approved by the city council, or by a vote of the voters of the district is to issue bonds of the district for the required amount then the board of education may issue and negotiate the bonds of the district, conforming to the terms and conditions voted upon, for the required amount of money for said purposes, not exceeding the maximum amount specified in said proposition. Said bonds shall be signed by the president and clerk of the board of education, and attested by the corporate seal of the district, and said board shall have the power, and it shall be their duty, to provide for the payment of said bonds, and the interest thereon, by levying and collecting the necessary tax therefor, on the taxable property in the district, without any further approval by the said city council, or the voters of the district; *Provided*, that no tax exceeding the rate of ten mills on a dollar be levied any one year, for that purpose.

Bonds of district how issued.

SEC. 19. So much of section 20 of an act entitled an act to incorporate the town of Lewiston, approved December 27, A. D. 1866, as constitutes the members of

Repeal of authority of city council to act as school trustees.

the city council ex-officio school trustees of said city of Lewiston, and authorizes them to manage and control the schools of said city is hereby repealed.

Board of education, powers.

SEC. 20. The board of education shall have power and it shall be their duty:

1st. To establish and organize such grades of schools, including in their discretion a full academic course, and alter and discontinue the same in said district as they may deem expedient.

2d. To provide necessary rooms or buildings for school houses, and grounds about the same.

3d. When authorized by the city council of the city of Lewiston, or a vote of the district, to purchase or erect one or more school buildings, and purchase sites for the same.

4th. To purchase, sell and exchange school apparatus, furniture, stoves and other appendages for school buildings, and to furnish fuel for the same.

5th. To take care of the property of the district, procure insurance, ornament and improve school property, and make ordinary repairs upon the same or any part thereof when deemed expedient.

6th. To contract with, employ and pay teachers who have received certificates as provided herein, and to discharge the same;

7th. To defray the necessary expenses of the board of education, pay the compensation of the clerk, treasurer, collector, and superintendent, and for such record books, printing, stationery and other incidental expenses as they may deem proper.

8th. To superintend and manage, in all respects, the schools of said district, and from time to time adopt, alter, modify, and repeal rules for their organization, government and instruction; for the keeping of registers for the reception of pupils resident and non-resident within the district, their suspension, expulsion, and transfer from one school to another, to prescribe text books and a course of study for the schools.

9th. To make rules and regulations respecting the protection, care and safe keeping of the property of the district, and to prescribe penalties for the breach thereof, to be recovered as penalties as in other cases before a justice of the peace, and to change and repeal the same :

10th. To make, change and repeal rules relating to the organization, government and business of said board and the duties of its officers :

11th. To determine the amount of tax to be raised for the current expenses of the school for the district, and to levy the same upon the taxable property in the district: To provide for the prompt payment at maturity of the principal and interest of any indebtedness of the district, by voting from time to time, taxes upon the taxable property of the district sufficient to meet the same, making allowance for delinquency in paying any part of such taxes.

12th. To furnish the board of examiners the necessary blanks for all such certificates as the board of examination may at any time order, which certificates shall severally contain the branches fixed for the several grades of certificates.

13th. When authorized by the city council, or by a vote of the district, to make, execute and deliver for and in behalf of said district, deeds, mortgages, releases, bonds and all other instruments, relating to the real property of the district, and necessary to maintain and support the schools thereof, or to provide buildings, rooms and grounds therefor.

14th. The said board of education shall have the power, and it shall be their duty, to determine and levy the amount of tax to be raised in said district for all the necessary expenses of said school hereinbefore provided for, in their own discretion, except the erection of school buildings and the purchase of sites therefor. They shall, during the month of July of each year, unless there are special reasons for delay, and then, so soon thereafter as is expedient, determine upon the amount of taxes to be raised for each fiscal year, not less than five, or more than ten mills on the dollar, and as soon thereafter as a certified assessment roll of the taxable property in said district can be obtained from the county auditor, and filed with the clerk of the board, fix the rate of taxation, and cause the clerk of the board to compute and specify the amount of tax due from each taxpayer in the district, in a tax list, and place the same in the hands of the tax collector of the district for collection on or before the third Monday in September of each year. The said board shall have power on the filing with the clerk of the board by the tax collector, of the delinquent tax list, and the statement of the tax collector of such, of the delinquent taxes as he deems collectible, and the amount not collectible, and before said list shall be placed in the hands of the district attorney for collection, to approve, or revise and correct the same, and by order suspend the

Same.

commencement of actions for the collection of taxes reported on said revised or approved list as uncollectible, and the tax collector shall file a duplicate of said approved or corrected list with the said attorney, as is provided herein among the duties of said collector. To keep the said schools in operation not more than nine months in each year, and shall keep an accurate account of their proceedings, and of their receipts and disbursements for school purposes, and make a report of such receipts and the source from which the same were derived, and the disbursements and objects to which the same were applied to the city council, of said city of Lewiston, at the expiration of each fiscal year of said district.

15th. Said board shall provide for the examination of all teachers employed in the schools of the district, and no teacher shall be employed in the schools of the district, who has not been duly examined and received a certificate of qualification as teacher, or by the examining officers or board of examiners, as said board of education may provide: The superintendent, or board of education may, for sufficient cause, annul said certificate, and when so annulled, the teacher holding the same shall be discharged.

16th. To appoint and pay a school census marshal in accordance with the provisions of the general school law.

Fiscal year.

SEC. 21. The fiscal year of said district, shall commence on the 1st day of July, and end on the 30th day of June of each year.

Power to levy tax.

SEC. 22. The power to levy taxes for school purposes on the taxable property within said school district, is hereby vested exclusively in the board of education, and said property shall be exempt from the levy made for school purposes, or to be made by order of the county commissioners, from and after April 1st, 1881, and said district shall receive no part of the general property school fund so levied and collected by order of the board of county commissioners.

All acts and parts of acts of the general laws of Idaho Territory, authorizing the levy of a tax for school purposes on the taxable property within said district, by the the board of county commissioners, is hereby repealed as to the said property within said district.

The said district shall be entitled to receive of all other general school funds, in the proportion as other school districts in the county.

SEC. 23. The records of the board of directors,

signed by the president, or a transcript thereof, or any part thereof, and all papers belonging to the office, or a transcript thereof certified by the clerk, shall be *prima facie* evidence of the facts therein stated, and all records, books and papers belonging to said board, of any legal voter or taxpayer of said district. Records evidence.

SEC. 24. Said district shall hold in its corporate name the title of lands and other property now owned by the district within its corporate limits, or which shall hereafter be acquired for school district purposes in said district, and no property held by it for public school purposes shall be subject to taxation. Title to property.

SEC. 25. Admission to all public schools taught in said district by authority of this act shall be free to the children of all actual residents in said district between the ages of five and twenty years, and to all other persons between the same ages who may be in good faith living in said district, and have not come into the same for the purpose of attending school. Persons non-resident within said district may be admitted to said schools on reasonable terms, at the discretion of the board of education. The board of education may suspend or expel pupils for insubordination, immorality or infectious diseases. Admission to schools.

SEC. 26. The board of education may prosecute any actions in their official capacity, in the following cases: Actions.

1st. On a contract made with them in their official capacity;

2d. To enforce a liability, or a duty enjoined by law in favor of officers, or board, or district;

3d. To recover a penalty or forfeiture given to school board or district;

4th. To recover damages for an injury to their official rights or property, or to the property of the district;

5th. An action may be brought against members of the board in their official capacity, either upon contract made by such board in their official capacity and within the scope of their authority, or for an injury to the rights of the plaintiffs arising from some act or omission of such board, or of the district. The actions authorized by this section may be brought by or against said members of said board, upon a cause of action which accrued within the time of their predecessors, as well as within their own term of office; and, when brought, may be continued by or against the successors in office of the parties whose names may for that purpose be submitted in the action;

6th. In legal proceedings against the directors in their official capacity, all processes and papers may be served on any one of them, and the party served shall notify the others of the fact of such service.

7th. When a judgment is recovered against any the directors in any action prosecuted by or against them, in their name of office, no execution shall issue on said judgment, but the same, if for the recovery of money, shall, unless reversed or stayed on appeal, be paid by the treasurer of the district upon demand, and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money of said district in his hands not otherwise appropriated. If there are no funds in his hands in the treasury available for the payment of said judgment, the board of education, on the filing of a certified copy of said judgment with the clerk of the board, shall include the amount of said judgment in the amount of tax to be raised by the next levy, and cause the same to be levied and collected as in other cases, and the judgment paid.

SEC. 27. All acts and parts of acts of the general laws of Idaho Territory in conflict with the provisions of this act, are hereby repealed.

SEC. 28. This act shall take effect from and after its passage.

Approved December 30, 1880.

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## BRIDGE ACROSS PAYETTE RIVER.

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### AN ACT

TO PROVIDE FOR THE BUILDING OF A BRIDGE ACROSS PAYETTE RIVER, AT OR NEAR HUNT'S FERRY, ON THE BOISE AND UMATILLA STAGE ROAD."

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Bridge commissioners.

SECTION 1. The County Commissioners of Ada County are hereby authorized and empowered, and it is made their duty to appoint five individuals, three of whom shall be residents of Ada County, and two of whom shall be residents of Washington County, and

all of whom shall be owners of real estate in said counties, and who shall be styled Bridge Commissioners.

It shall be the duty of said bridge Commissioners to locate and construct a bridge at or as near Hunt's Ferry Location of bridge. as possible, and it shall in no case be one-half mile above or below said ferry. It shall be their further duty to determine on the plans and specifications for such bridge, and to let the contract for the building of said bridge, Contract. and all necessary embankments or work connected therewith, to the lowest responsible bidder, in such manner and under such regulations as said bridge Commissioners shall agree upon. It shall be the further duty of said Bridge Commissioners to contract with the individuals to whom such contract shall be let, in the name of Ada and Washington Counties, and it shall be at the option of said Bridge Commissioners to require security of any contractor for the faithful performance of his contract. And it shall be the further duty of said Bridge Commissioners to inspect said work from time to time Inspection of work. during its progress, and when any part thereof has been faithfully completed according to the terms of the contract, to receive the same. It shall also be the duty of said Bridge Commissioners to make a full report as to the location selected, and as to the plans and specifications adopted, and of the performance and acceptance of any work, to the board of County Commissioners of Ada and Washington Counties, which report shall be duly filed Reports of commissioners with the clerks of said boards. Also all contracts entered into and all bonds taken, shall be filed with the clerks of the board of County Commissioners of Ada and Washington Counties; *Provided*, that no contract for building said bridge shall be taken by either of the persons appointed as such Bridge Commissioners.

SEC. 2. The board of County Commissioners of Ada County are required to fill any vacancy that may occur, Vacancies in board. from any cause, in the number of said Bridge Commissioners, until the final completion and acceptance of said bridge. Said Bridge Commissioners shall receive such compensation as shall be allowed by the board of County Compensation of board. Commissioners of their respective counties, to be paid as other current expenses of the county are paid.

SEC. 3. For the purpose of raising money for the building of the bridge required by this act, it is made the duty of the County Commissioners of Ada and Washington Counties to issue bonds not to exceed five thousand dollars, in sums of not less than one hundred nor more than five hundred dollars, bearing interest at the rate Bonds.



Date of payment.

Proceeds of sale of bonds.

Expenses of issue and negotiation of bonds.

Amount to be sold.

Control of bridge.

Surplus.

of eight per cent. per annum. The county of Washington shall issue two thousand dollars of the amount required by this act for the building of said bridge, and the county of Ada three thousand dollars. The interest on these bonds shall be payable semi-annually at the offices of the county treasurers of the respective counties. Said bonds shall have interest coupons attached, and shall be made payable not more than twenty years from date, but may be redeemed at any time after ten years. Said bonds shall be numbered consecutively and registered in the office of the county recorders of the respective counties, in a book to be kept for that purpose, noting in such registration the number, date, and amount of each bond. Said bonds shall be signed by the treasurers of the respective counties and countersigned by the recorders, and have the seal of the county recorders thereon. Said bonds shall be negotiated and sold by the county treasurers, and the proceeds thereof kept in a separate fund called the bridge fund, and said treasurers shall render an account to the County Commissioner of Ada and Washington Counties, of the bonds received by them, of the cash received by them for said bonds, and all necessary expenses attending their negotiation and sale. And such account shall be subject to the allowance and approval of the boards of County Commissioners of the respective counties.

SEC. 4. All expenses incurred in issuing said bonds, as well as all expenses incurred in the negotiation and sale of said bonds, shall be paid out of the bridge fund of said counties, and shall be presented to and allowed by the County Commissioners of the respective counties. All claims arising on account of building said bridge under the provisions of this act, except as otherwise herein provided for, shall be presented to the County Commissioners as other claims are presented, and shall be allowed on and paid out of said bridge funds.

SEC. 5. Whenever the proceeds of said bonds shall be sufficient to pay the expenses of issuing said bonds, and of their negotiation and sale, and the expense of building said bridge provided for by this act, no more bonds shall be sold.

SEC. 6. After any bridge shall have been built in accordance with the provisions of this act it shall thereafter be county property, and shall be under the control of the County Commissioners of Ada and Washington Counties, to be kept in repair as other county property.

SEC. 7. Any surplus that may arise from the sale of

said bonds shall continue in the bridge funds of Ada and Washington Counties, and shall be applied to the payment of the interest on said bonds.

Sec. 8. It shall be the duty of the County Commissioners of Ada and Washington Counties to levy annually, at the same time other county and territorial taxes are levied, a sufficient tax on the taxable property in said counties to pay the interest on said bonds, in addition to the other county and territorial taxes, and the same shall be collected as other county and territorial taxes are collected, and when collected shall be kept in a separate fund called the bridge fund, and shall be applied to the payment of the interest on said bonds as the same falls due, and after the lapse of ten years said tax shall be increased so as to reduce the principal of said bonds not to exceed in Ada County the sum of one thousand dollars per annum, and in Washington County the sum of five hundred dollars per annum.

Tax for interest  
on bonds.

Tax for pay-  
ment of bonds,

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## BRIDGE ACROSS BEAR RIVER.

### AN ACT

TO PURCHASE AND REPAIR, OR CONSTRUCT A BRIDGE  
ACROSS BEAR RIVER IN ONEIDA COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the County Commissioners of Oneida County are hereby authorized and empowered to contract with the owner or owners of the bridge known as the "Packer Bridge," across Bear river, on the Montana stage road via Franklin, in said county, for the purchase of the same, on or before the 1st Monday in April, 1881; *Provided*, that the price paid for the same shall not exceed three hundred dollars, and said commissioners are empowered, in the event of such purchase, to expend upon the repair of such bridge an amount not to exceed the sum of one thousand dollars.

Contract for  
purchase.

Price.

Repairs.

Sec. 2. That in the event of a failure to purchase said

Contract for  
construction.

bridge as above set forth, said commissioners are hereby authorized and empowered to contract for the construction of a new bridge across said Bear River at some convenient point, to be designated by said board of County Commissioners; *Provided*, that the cost of construction of said bridge shall not exceed the sum of three thousand dollars.

Payment.

SEC. 3. The cost of such purchase and repairs or of such construction, be audited and paid out of the general fund of said county, as other claims are audited and paid.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved February 7, 1881.

## BRIDGE ACROSS BOISE RIVER.

### AN ACT

TO PROVIDE A FREE BRIDGE ACROSS BOISE RIVER NEAR BOISE CITY, IN ADA COUNTY, AND TO ESTABLISH A BRIDGE COMMISSION IN SAID COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Free bridge.

SECTION 1. Ada County shall purchase or construct, and shall maintain a free bridge over Boise River opposite or near Boise City, the county seat of said county.

Bridge com-  
missioners.

SEC. 2. There shall be in said county, a commission of five, to be known as Bridge Commissioners, all of whom shall be residents and free holders of the county and at least three of whom shall be residents of Boise City, and a majority of whom shall constitute a quorum for the transaction of business and shall, from time to time, fill any vacancy in the commission. Christopher W. Moore, Thomas E. Logan, Jeremiah Brumback, George Goodrich and Isaac W. Coston shall constitute such commission; but, if a majority of said persons shall fail to qualify and act as such, or, if at any time before the expiration of the commission there shall be less than three commissioners, the board of County Commissioners of said county shall fill the vacancies in said commission by the appointment of some suitable and qualified per-

Vacancies.

son. Said commission shall continue until the first day of January, 1882, and until the completion and acceptance of the bridge authorized by this act and the completion of any other bridge which Ada county may be authorized and required by the present Legislative Assembly to construct in whole or in part, and, before entering upon the duties of their office, each Bridge Commissioner shall take and subscribe an oath before the clerk of the board of County Commissioners, faithfully to perform the duties of his office to the best of his knowledge, skill and ability; and the members of the commission shall receive such compensation for their services as the board of County Commissioners shall allow, not to exceed five dollars per day for the time actually employed by each; and no member of the commission shall be interested in any contract let or made by the commission, or in any labor done or supplies or materials furnished for or by or under the direction of the commission, or a surety for the performance of any contract, or the agent or partner of any contractor with the commission; and no action shall be maintained or recovery had against said county or said commission upon any contract in which any member of the commission is so interested, but the same shall be void.

Duration of  
commission.

Compensation  
of commis-  
sioners.

SEC. 3. It shall be the duty of said commission within thirty days from the passage of this act, to make a thorough examination of the bridges over Boise River opposite Boise City, known as Ridenbaugh's bridge, and of the abutments, piers, timbers, embankments and approaches to the same, and of the channel of the stream, the sloughs and bars to be crossed, and for such purpose they may employ one or more experts or assistants, and such laborers as they may find necessary; and if, after such examination, they shall conclude that the purchase of said bridge by the county is expedient, they shall enter into negotiations with the owner or owners thereof for its purchase by the county, subject to the limitations and restrictions in this act contained; and, if such bridges can be purchased and a sufficient title obtained, on terms, the price, condition and location of the bridge and its approaches considered, more advantageous to the county than would be the erection of a new bridge, said commission shall enter into a contract for the conveyance of the premises, and every part and parcel thereof, to the county of Ada, and shall report their proceedings to the board of County Commissioners of said county at their regular meeting in April next, and file such contract of purchase with the clerk of said board.

Examination  
of bridges.

Experts.

Contract for  
purchase.

Location of  
new bridge.

Plans and  
specifications.

Bids for con-  
struction

Contractors'  
bond.

Right of way  
for approaches.

SEC. 4. If said commission shall not effect a purchase of said bridge, as provided in the last section, they shall, during the month of April next, proceed to select a location for a new bridge opposite Boise City, and in no case more than one mile above the point where the easterly end of the plat of Boise City, if extended, would cross Boise River, or more than one mile below the point where the westerly end would cross said river; and shall, without unnecessary delay, procure and adopt plans and specifications for the proposed bridge, and shall make a careful estimate of the probable cost of the same and of all necessary abutments, piers, embankments and protections to the same, and of the roads and rights of way leading to and from the same; and no plans and specifications adopted by the commission shall involve a greater expenditure than as hereinafter authorized. They shall file the plans and specifications in the office of the clerk of the board of County Commissioners, where they shall be subject to public inspection, and shall immediately proceed to advertise for four successive weeks, in such newspapers as they may think proper, for sealed proposals for the erection of said bridge and its approaches and protections, according to the plans and specifications on file, in which notice they shall reserve the right to reject any and all bids; and at the expiration of said notice, and at a time and place to be named therein, the commission shall publicly open said bids, and shall award the contract to the lowest responsible bidder, if not in excess of the expenditure hereinafter authorized, unless they shall for good and sufficient reasons reject all the bids,—in which case, and as often as they shall for sufficient reasons reject all the bids offered, they shall immediately re-advertise as before, and receive and open bids as above directed. But the commission may, if in their judgment expedient, receive separate bids and let separate contracts for the erection of the bridge and for the building of embankments, approaches, and roads to and from the same. The commission shall require from all contractors a bond in such sum as the commission shall fix, with two sufficient sureties, conditioned for the faithful performance of their contract, and all such contracts and bonds made under this act shall be made to or in the name of Ada County. The commission shall secure by purchase or condemnation the right of way for the necessary approaches to the bridge, and shall file all contracts entered into, with the clerk of the board of County Commissioners, and shall make a report in writing of the proceedings of the commission to each regular meeting of the board.

SEC. 5. Any purchase or purchases made and any and all plans and specifications adopted and contracts let by the commission, shall be on the basis of an expenditure not to exceed twelve thousand dollars of the bonds of the county as hereinafter described, for the purchase of the bridge mentioned in section three, and putting the same and the approaches thereto in good repair, and protecting the same, and removing any bar or obstruction that may endanger the bridge or its approaches, or for the construction and completion of a new bridge with all necessary protections, approaches, embankments and roads leading to and from the same and connecting with public roads or streets now traveled. The contracts let, may provide for partial payments as the work progresses, but no part of the work embraced in one contract shall be accepted until the entire contract is completed; and any partial payments made shall not exceed seventy per cent. of the actual value of the part performed, and the remainder shall be reserved as an additional security for the faithful performance of the contract.

Amount to be expended.

Partial payments.

SEC. 6. In case of the purchase of said bridge mentioned in section three, the bridge commissioners shall cause the same to be put in good repair, and the bridge and its approaches to be secured and protected against injury from floods and high water, and may cause any bar to be removed or the current of the stream to be turned, when necessary or expedient for the protection of the bridge. And in case of the construction of a new bridge as authorized by this act, all work done shall be under the supervision of said commissioners, and it shall be their duty to see that the work and materials are according to contract.

Repairs.

SEC. 7. To carry out the foregoing provisions of this act, there shall be issued not to exceed twelve thousand dollars of negotiable coupon bonds of said county of Ada, in denominations of one hundred, five hundred, and one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, on the 1st day of January and the 1st day of July of each year; and two thousand dollars of said bonds shall mature and become due and payable on the 1st day of July, A. D. 1890, and the principal of two thousand dollars on the 1st day of July annually thereafter until all are paid; and the principal and the interest thereof shall be payable at the office of the treasurer of said county in Boise City; and the length of time that each of said bonds runs before maturity, shall be expressed

Bonds to be issued.

Maturity of bonds.

Same.

on the face thereof, and each shall have attached, when negotiated, semi-annual interest coupons covering the interest thereon, at the rate aforesaid, from the 1st day of January or the 1st day of July next after its sale until its maturity, as expressed in the bond, and no more. Said bonds shall be signed by the chairman of the board of County Commissioners of said county, and attested by the clerk of the board and its seal, and countersigned by the treasurer of Ada County; they shall express on their face that they are issued under the provisions of this act, and the treasurer shall number said bonds consecutively and register the name in a book kept in his office for that purpose, which shall be a public record, and which shall show the dates of the negotiation and maturity of each, and the number of coupons attached to each when negotiated; and said treasurer shall cancel each coupon detached from each bond before its negotiation, and each coupon and bond redeemed, in the presence of the board of County Commissioners, at their next meeting after any such coupon is so detached, or any coupon or bond is so redeemed, after which they shall be at the disposal of the board.

Coupons.

Printing of bonds.

SEC. 8. The board of County Commissioners of said county shall immediately after the passage of this act secure the proper engraving and printing of the bonds authorized by this act, and shall pay the necessary expense thereof out of the county treasury; and said board shall, without delay, negotiate and sell sufficient of said bonds to pay the purchase price, if said bridge commissioners shall have entered into an agreement for the purchase by the county of the bridge and premises mentioned in section three, and sufficient to put the same and the approaches thereto in good repair, and to protect the same, and remove any bar or obstruction that the bridge commissioners may deem it necessary to remove, and to pay the salary of the bridge commissioners and their necessary experts and assistants, and no more; but if said purchase is not made, they shall negotiate and sell sufficient of said bonds as may be required to meet the contracts of said bridge commissioners for the construction and completion of a new bridge, with all necessary protections, approaches, embankments, rights-of-way and roads leading to and from the same, as described in section five, together with the salary and pay of members of the commission, their experts and assistants; and if from any unforeseen cause it shall become necessary for the completion of said bridge or its approaches as afore-

Number of bonds to be sold.



said, or for its protection as aforesaid, and shall be so declared by a majority of said bridge commissioners; the board of County Commissioners may issue, negotiate and sell not to exceed three thousand dollars of said bonds in addition to said twelve thousand dollars; and the proceeds of all bonds negotiated under the provisions of this act, shall be placed in the county treasury, and devoted to the purposes in this act directed, and any surplus of such proceeds shall be devoted to the payment of the interest of said bonds.

SEC. 9. For the payment of the principal and interest of the bonds issued under this act, the board of County Commissioners of said county shall at the time of their levy of other county taxes, include therein a levy of sufficient tax upon all the taxable property in said county to pay the interest and such part of the principal of said bond, if any, as will, according to the terms thereof, become due during the ensuing year, after making all due allowances for delinquencies and the cost of collecting the same, and after deducting any moneys in hand subject to be so applied; and such tax shall be known as the bridge bond tax, and shall be collected and paid into the county treasury as other county taxes are collected and paid, and shall constitute a separate fund to be known as the bridge bond fund, and shall not be diverted or used on any pretense or for any purpose except as above provided. And for the payment of the principal and interest of said bonds, according to the terms thereof, all the taxable property of said county is hereby solemnly and irrevocably pledged.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## SCHOOLS.

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### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH A PUBLIC SCHOOL SYSTEM, AND TO PROVIDE FOR THE MAINTENANCE AND SUPERVISION OF PUBLIC SCHOOLS," APPROVED FEBRUARY 21, 1879.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Section  
amended.

SECTION. 1. That all that portion of section seventeen (17) of the act of the Legislative Assembly of the Territory of Idaho, entitled "An Act to establish a Public School System and to provide for the maintenance and supervision of Public Schools," approved February 21, 1879, contained in the proviso at the end of said section seventeen, and included in the last sentence of said section, commencing with the word "provided," be and the same is hereby amended, to read as follows:

Disposal of  
public moneys  
for school pur-  
poses in cer-  
tain counties.

"*Provided*, that in the county of Owyhee one-third of the whole amount of public school moneys reported by the county treasurer shall be divided equally among the several organized districts, and the remaining two-thirds, *per capita*, as provided in this section.

SEC. 2. That this act shall take effect and be in force from the date of its passage.

Approved February 10, 1881.

SCHOOL SUPERINTENDENTS IN BEAR  
LAKE, ALTURAS, CUSTER, LEMHI,  
ADA AND BOISE COUNTIES.

AN ACT

TO PROVIDE FOR THE ELECTION OF COUNTY SCHOOL  
SUPERINTENDENTS IN CERTAIN COUNTIES OF THIS  
TERRITORY.

*Be it enacted by the Legislative Assembly of the Terri-  
tory of Idaho, as follows:*

SECTION 1. There shall be elected biennially at each Election.  
general election in the counties of Bear Lake, Alturas,  
Custer, Lemhi, Ada and Boise by the qualified voters of  
said counties, a county school superintendent, whose term Term of office.  
of office shall commence on the first Monday of January  
succeeding his election; and continue for two years there-  
after, and until his successor is elected and qualified.  
The board of County Commissioners of his county shall  
fix his compensation, which shall be paid out of the Compensation.  
county treasury, and before entering upon his duties, he  
shall take and subscribe an oath before the county re- Oath.  
corder faithfully to perform the duties of school superin-  
tendent for his county. And the board of County Com-  
missioners of each of said counties, shall, at their regular  
meeting in April next, or at any subsequent meeting, if Appointment  
by county  
commis-  
sioners.  
from any cause they shall fail so to do at said regular  
meeting, appoint some suitable person county school  
superintendent for their county, and shall fix his compen-  
sation, and the person so appointed shall qualify as  
aforesaid, and shall serve until the first Monday in  
January, 1883, and until his successor is elected and  
qualified. Such superintendent shall, in addition to the  
other duties imposed by an act to establish a public  
school system, and to provide for the maintenance and  
supervision of public schools, approved Feb. 21, 1879,  
visit each public school in his county at least twice each Visit schools.  
year.

SEC. 2. Section thirty-nine of said act shall not apply to the counties named in section one.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## TRESPASS OF HOGS IN CERTAIN COUNTIES.

### AN ACT

REGULATING HOGS FOUND TRESPASSING IN THE COUNTIES OF ADA, NEZ PERCE, ONEIDA, ALTURAS, BEAR LAKE, LEMHI, AND A PART OF WASHINGTON, IN THE TERRITORY OF IDAHO.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Hogs trespassing, to be taken up and kept.

SECTION 1. That any hog or hogs found trespassing upon the premises of any person or persons, in the counties of Ada, Nez Perce, Oneida, Alturas, Bear Lake, Lemhi, and all of Washington excepting what is known as the Upper Weiser Valley. The rightful occupant or proprietor of such premises may take up and safely keep, at the expense of the owner or owners thereof, any such hog or hogs so found trespassing, and hold the same until the payment of the expense and damages by them created has been made by the owner or owners thereof.

Notices.

SEC. 2. Any person or persons taking up a hog or hogs under this act, shall immediately thereafter write out three notices in a plain, legible hand, giving a correct description of each and every hog so taken up, with the marks and brands, if any, on said hog or hogs, and the time and place of taking up, and shall proceed at once to post up said notices in a good and substantial manner, in three conspicuous places in the precinct in which said hog or hogs have been taken up.

Arbitration of damages.

SEC. 3. If the owner and taker up of such hog or hogs cannot agree as to the amount of damages so created, they shall call upon (one each) disinterested persons residing in the precinct where such trespass has been committed, who shall, after first hearing all the facts in

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the case, from both parties interested, fix the amount of damages, if any, to be paid, and the same shall be a lien Lien. upon such hog or hogs, until paid by the owner, and if said amount is not paid within five days, together with the costs of keeping said hog or hogs, the taker up shall proceed to notify the constable of the precinct, whose duty it shall be to sell said hog or hogs at public auction, on the premises sale. where they were taken up, after first giving five days' notice of such sale in the manner prescribed in section 2 of this act for notices, and the proceeds of such sale shall be applied, first, to the payment of the constable's fees, which shall be the same as on execution; second, Application of proceeds of sale. the payment of the award and subsequent charges for keeping to the taker up of such hog or hogs, and the remainder, if any, shall be paid to the owner or owners of such hog or hogs; *Provided*, that either party feeling aggrieved by the award shall have the to appeal to Appeal. any Justice's or Probate Court within the county, within five days after said award; *Provided, further*, that the party so appealing shall file a good and sufficient bond Bond. for the payment of all costs and expenses arising from said appeal.

SEC. 4. If the owner or person entitled to the possession of such hog or hogs does not appear and substantiate his title thereto, and pay the charges thereon, within ten days after notice has been given, as provided in section 2 of this act, such hog or hogs shall be sold by the sheriff or any constable of the county at public auction, Failure of owner to appear. upon first giving public notice thereof in writing, by posting the same in three of the most public places in the precinct where such hog or hogs may have been taken up, ten days before such sale. After deducting all the lawful charges of the taking up, and the fees of the officers, which shall be the same as on execution, the remaining proceeds of such sale shall be by said officer selling paid to the County Treasurer, taking his receipt therefor, which he shall immediately file with the auditor and recorder of the county; and if at any time within six months after the filing of said receipt the owner or owners shall make satisfactory proof to the board of County Commissioners that he or they were the lawful owner or owners of said hog or hogs at the time they were taken up and sold, the board of County Commissioners shall direct the auditor and recorder to draw a warrant on the county treasurer in favor of such party for the amount paid to such county treasurer Disposal of proceeds. When owner may claim p. o. ceeds.

from the proceeds of the sale of such hog or hogs, as shown by the receipt of said treasurer.

SEC. 5. All acts and parts of acts, in conflict with the provisions of this act, are hereby repealed.

SEC. 6. This act to take effect and be in force from and after its approval by the Governor.

Approved January 22, 1881.

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## STALLIONS.

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### AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO ALLOW VALUABLE STALLIONS KEPT FOR BREEDING PURPOSES TO RUN AT LARGE WITH THE BANDS OF THEIR OWNER OR OWNERS," APPROVED FEBRUARY 20, 1879.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Section  
amended.

SECTION 1. That Section 1 of said act be amended by striking out the words "and Idaho" in said section, and inserting in lieu thereof the words "Idaho and Cassia."

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 7, 1881.

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## STOCK—MARKS AND BRANDS.

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### AN ACT

TO REPEAL THE TENTH SECTION OF AN ACT ENTITLED "AN ACT TO REGULATE MARKS AND BRANDS OF STOCK," APPROVED JANUARY 12, 1877.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Section re-  
pealed

SECTION 1. Section ten of said act is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved January 10, 1881.

## DESK FOR THE OFFICE OF THE CLERK OF THE SUPREME COURT.

### AN ACT

TO PROVIDE AN ADDITIONAL DESK FOR THE OFFICE OF  
THE CLERK OF THE SUPREME COURT.

*Be it enacted by the Legislative Assembly of the Ter-  
ritory of Idaho, as follows:*

SECTION 1. The sum of two hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Territorial treasury, for the purpose of procuring a suitable book-case or desk for the office of the clerk of the Supreme Court, in which to keep the records, transcripts and files of said court. Appropriation for.

SEC. 2. The labor shall be performed in a workman-like manner, and the bill for the same shall be approved by one of the Justices of the Supreme Court of the Territory; and the controller is hereby authorized and required, upon receiving such approved bill, to issue a warrant for the same, not exceeding the sum mentioned in section one; and the Territorial treasurer shall pay such warrant out of any moneys in the Territorial treasury not otherwise appropriated. Bill for how paid.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.



## RELIEF OF EDWARD McCONVILLE.

### AN ACT

#### FOR THE RELIEF OF EDWARD McCONVILLE.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

Amount appropriated.

SECTION. 1. That the sum of one hundred (\$100) dollars, be and the same is hereby appropriated for the claim of Edward McConville, against the Territory of Idaho, for the care, drayage and storage of arms and ammunition belonging to the Territory, from the first day of April, 1878, to the first day of December, 1880.

SEC. 2. The Controller of Idaho Territory is hereby authorized and directed to draw his warrant on the Territorial Treasurer, in favor of Edward McConville, for the sum appropriated by this act, payable out of any money in the Territorial treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## LEAVE OF ABSENCE OF E. T. BEATTY.

### AN ACT

#### GRANTING LEAVE OF ABSENCE TO E. T. BEATTY, PROBATE JUDGE OF LEMHI COUNTY.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That E. T. Beatty, Probate Judge of Lemhi County, be and is hereby granted leave of absence

from the Territory of Idaho, for a period of sixty days, during the year of 1881, the time of such absence to be selected by himself within such year, and such absence shall not create a vacancy in such office.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved December 24, 1880.

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## DIVORCING — FALLON AND FALLON.

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### AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY NOW EXISTING BETWEEN MARTIN FALLON AND MARY FALLON, HIS WIFE.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the bonds of matrimony heretofore and now existing between Martin Fallon and Mary Fallon, his wife, be, and the same are hereby dissolved and declared void.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 9, 1881.

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## DIVORCE—HEED AND HEED.

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### AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN MARY HEED AND ALBERT HEED, HER HUSBAND.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the bonds of matrimony now and heretofore existing between Mary Heed and Albert Heed, her husband, be and the same are hereby dissolved, and said marriage declared null and void.

Sec. 2. This act to take effect and be in force from and after its passage.

Approved February 7, 1881.

## DIVORCING POLLARD AND POLLARD.

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### AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN  
JANE E. POLLARD AND JOHN POLLARD, HER HUSBAND.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the bonds of matrimony heretofore existing between Jane E. Pollard and John Pollard, her husband, be and the same are hereby dissolved.

SEC. 2. This act to take effect from and after its passage.

Approved February 10, 1881.

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## DIVORCING ROBBINS AND ROBBINS.

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### AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY NOW AND  
HERETOFORE EXISTING BETWEEN ORLANDO ROBBINS  
AND MALINDA ROBBINS, HIS WIFE.

*Be it enacted by the Legislative Assembly of Idaho Territory, as follows:*

SECTION 1. That the bonds of matrimony now and heretofore existing between Orlando Robbins and Malinda Robbins, his wife, are hereby dissolved and the same declared void.

SEC. 2. That this act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## DIVORCING STINE AND STINE.

### AN ACT

TO DISSOLVE THE BONDS OF MATRIMONY BETWEEN ALFARETTA STINE AND EUGENE V. STINE, HER HUSBAND.

*Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:*

SECTION 1. That the bonds of matrimony now and heretofore existing between Alfaretta Stine and Eugene V. Stine, her husband, are hereby dissolved, and said marriage declared null and void.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 10, 1881.

## LEGISLATIVE ATTACHES.

### COUNCIL JOINT RESOLUTION NO. 1.

*Resolved, by the Council of the Legislative Assembly of the Territory of Idaho, the House of Representatives therein concurring:*

That in addition to the subordinate officers of each branch of said legislature provided for by chapter 329 of the statutes of the forty-fifth Congress, entitled "An act making appropriations for the legislative, executive and judicial expenses of the government for the fiscal year ending June 30, 1879, and for other purposes," each branch of said Legislative Assembly shall elect one assistant chief clerk, one assistant enrolling and engrossing clerk, and one door-keeper, "the compensation of each of

whom shall be at the rate of four (4) dollars per day from the date of their election."

Said compensation to be paid out of the general fund. And the Territorial controller is hereby authorized, and directed to draw his warrants on the Territorial treasury for the respective amounts which may become due in favor of such persons as the Council and House of Representatives may select for such positions.

Approved December 17, 1880.

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## GOVERNOR'S PRIVATE SECRETARY.

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### COUNCIL JOINT RESOLUTION NO. 3.

*Be it resolved by the Legislative Assembly of the Territory of Idaho, as follows :*

That the sum of one hundred and fifty dollars, be appropriated out of any money in the Territorial treasury, for services as private secretary to his excellency John B. Neil, Governor of Idaho Territory, and the Territorial controller is hereby authorized and directed to draw his warrant on the Territorial treasurer for said sum of one hundred and fifty dollars, in favor of the person whom the Governor may designate as such private secretary, and the Territorial treasurer is hereby authorized and required to pay the same out of any money in the Territorial treasury not otherwise appropriated.

Approved December 24, 1880.

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## CONCERNING TERRITORIAL CONTROLLER AND TREASURER.

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### COUNCIL CONCURRENT RESOLUTION NO. 3.

*Be it resolved by the Council, the House of Representatives concurring:*

That the committee on Finance of the Council, and the committee on ways and means of the House of Rep-

representatives, be instructed to make a thorough investigation into the condition of affairs in the office of the Territorial controller and treasurer, with power to send for persons and papers, and make their report at as early a day as possible.

Approved December 24, 1880.

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## POSTAGE STAMPS FOR LEGISLATURE.

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### COUNCIL JOINT RESOLUTION NO. 4.

*Be it resolved by the Legislative Assembly of the Territory of Idaho:*

That the sergeant-at-arms of the House of Representatives, and the sergeant-at-arms of the Council, be required to procure from the Territorial controller, postage stamps for the use of the members of the Council, and members of the House of Representatives of the eleventh session of the Legislative Assembly of Idaho Territory, not to exceed five (5) dollars in value to each member, and the Territorial controller is hereby directed to audit their accounts, and draw his warrants on the Territorial treasurer, for the amounts that may be due them respectively, payable out of any funds in the treasury not otherwise appropriated.

Approved December 30, 1880.

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## PUBLIC PRINTER.

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### COUNCIL CONCURRENT RESOLUTION NO. 4.

*Resolved by the Council, the House of Representatives concurring:*

That the Council and House of Representatives of the Legislative Assembly of Idaho Territory, will meet at the council chamber in joint convention on the 23rd day of December inst., at 7 o'clock P. M., for the election of a public printer.

## STATUTE LAWS.

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### SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION NO. 5.

*Resolved by the House of Representatives, the Council concurring:*

That the judiciary committees of the two houses of the Legislative Assembly be, and they are hereby instructed to inquire into the desirability of a revision of the statute laws of the Territory, and to report the best means of effecting the same, and the terms and conditions upon which a thorough revision can be secured, to be submitted to the next legislative assembly.

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## HISTORICAL SOCIETY OF IDAHO PIONEERS.

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### COUNCIL JOINT RESOLUTION NO. 6.

*Be it resolved by the Legislative Assembly of the Territory of Idaho, as follows:*

That the sum of two hundred and fifty dollars per annum be appropriated out of any moneys in the Territorial treasury not otherwise appropriated, to the trustees of the Historical Society of Idaho Pioneers, to enable them to collect and prepare a reliable history of the early settlement of the Territory, and a correct statistical record showing the facilities for settlement and cultivation, the inducements which the Territory offers to labor and capital, together with a reference to its financial resources, and report a synopsis of their findings to the next Legislative Assembly. And the Territorial controller is hereby authorized and directed to draw his warrant on the Territorial treasurer, for the sum of two hundred and fifty



dollars per annum to the trustees of said Historical Society of Idaho Pioneers, and the Territorial treasurer is hereby authorized and required to pay the same out of any money in the Territorial treasury not otherwise appropriated.

Approved February 10, 1881.

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## DISTRIBUTION OF SESSION LAWS.

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### HOUSE CONCURRENT RESOLUTION NO. 12.

*Be it resolved by the House of Representatives, the Council concurring:*

That whenever the laws passed at this the eleventh session of the Legislative Assembly of Idaho Territory, are printed, and the journals of the Council and House are printed;

That the secretary of the Territory is hereby directed to forward to each member of each legislative body one copy of the session laws and one copy of the journals of each House.

Approved February 10, 1881.



**INDEX TO CODE OF CIVIL PROCEDURE.**



# INDEX

## TO THE CODE OF CIVIL PROCEDURE.

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[~~13~~ The references are to the sections.]

<b>ABATEMENT AND REVIVOR—</b>	Section.
action shall not abate by death or other disability.....	200
action shall not abate by transfer of interest therein.....	200
action may be continued by or against representatives, when.....	200
action in the name of the original party, when.....	200
transferee may be substituted in, when.....	200
of nuisance or waste.....	471
ib.....	472
<b>ABBREVIATIONS—</b>	
may be used in written proceedings.....	71
<b>ABSENCE—</b>	
of Judge, Court to be adjourned.....	48
of Judge, term saved, how.....	49
waives a jury, when.....	389
of testimony, when trial to be postponed.....	364
of evidence, cause for continuance.....	364
of witness out of Territory, deposition taken, when.....	961
<b>ABSENTEE—See NON-RESIDENT.</b>	
<b>ABSTRACT—</b>	
of title in action for partition when cost of, allowed.....	533
<b>ABSCONDING—</b>	
arrest of debtor when there is danger of his.....	461
<b>ACCIDENT—</b>	
grounds for new trial, when.....	411
<b>ACCOUNT—</b>	
items of, need not be pleaded, but may be demanded.....	251
stated in pleadings, how.....	251
copy of, may be demanded.....	251
a further, may be ordered, when.....	251
reference of, after judgment by default, when.....	356
<b>ACCOUNTING—</b>	
action for, rent pending redemption.....	457
<b>ACCUSATION—</b>	
verification of.....	129
citation to, answer to, when.....	130

ACCUSATION— <i>Continued.</i>	Section.
appearance to answer.....	131
how answered.....	132
demurrer to.....	133
answer forthwith to, when.....	134
trial of.....	135
reference of.....	136
judgment on.....	137
ACT—See CODE OF CIVIL PROCEDURE.	
ACTS—	
executive, as evidence.....	914
municipal corporation, as evidence.....	914
ACTIONS—	
not affected by this Code, except.....	5
only one form of.....	138
parties to, how designated.....	139
commencement of.....	141
when cannot be brought by the people.....	142
seizin within five years, when necessary for real property.....	143
seizin when necessary in, or defense rising out of it.....	144
against husband and wife, wife may defend alone, when.....	186
against bail on arrest, when.....	282
against two or more defendants.....	223
against joint debtors.....	672
for official acts against Sheriff.....	720
to be in name of party in interest.....	182
by an assignee.....	183
when married woman is party, by and against.....	185
by guardian for death of ward.....	191
by guardian for seduction of ward.....	190
by guardian for injury to ward.....	191
for her own seduction, unmarried female may bring.....	189
what to be commenced within six years.....	155
what, are to be commenced within five years.....	156
what, are to be commenced within four years.....	157
what, are to be commenced within three years.....	158
what, are to be commenced within two years.....	159
what, are to be commenced within one year.....	160
what, are to be commenced within six months.....	161
for relief, when to be commenced.....	164
for balance of mutual accounts.....	162
by the people, subject to same limitations as by private persons..	165
when deemed commenced.....	168
exception, where defendant is out of Territory.....	169
exception as to persons under disabilities.....	170
provisions where person entitled dies before limitation expires...	171
provisions where judgment on, has been reversed.....	173
provisions where staid by injunction.....	174

**ACTIONS—** (*Continued.*)

Section.

disability must exist when right of, accrued.....	175
limitation against director, etc., of corporations.....	177
existing cause of, not affected.....	180
includes a special proceeding.....	181
by father or mother for injury of child.....	191
by father or mother for death of child.....	191
by father for seduction of daughter.....	190
by mother for seduction of daughter, when.....	190
by representatives for death of person by wrongful act.....	192
by tenants in common, joint, and coparceners.....	197
when, and when not to abate.....	200
place of trial of certain.....	205
to be tried where subject, or some portion of, is situate.....	205
to be [tried where cause of, arose.....	206
against counties, where tried.....	207
to be tried where parties reside.....	208
may be tried in any county, unless defendant demands trial in proper .....	209
place of trial of, may be changed in certain cases.....	211
papers in, to be transferred on transfer of.....	212
questions of fact, when in issue may be tried in.....	140
order for trial, how made.....	140
how commenced .....	214
pending of, notice how given.....	218
for recovery of real property, description.....	252
for partition of real property.....	487
to quiet title.....	476
not to be prejudiced by alienation.....	485
for nuisance.....	471
for waste.....	472
for trespass.....	473
against persons severally liable on promissory notes, etc.....	198
to foreclose mortgage.....	468
for libel and slander.....	257
for usurpation of office.....	535
for damages against non-attending witness.....	948
for delivery of personal property.....	297
on written instrument.....	246
against joint debtors.....	672
title of, to be named in complaint.....	230
what causes of, may be joined.....	231
when may be dismissed, or nonsuit entered.....	354
concerning mining claims governed by <i>lex loci</i> .....	486
defaulting witness, for damages against.....	948
by Territory.....	245
by officer thereof.....	245
deposition in, when witness out of Territory.....	961



ACTIONS—(Continued.)	Section.
deposition in, when witness resident of Territory .....	962
for condemnation of land .....	856
complaint in, contains what .....	857
against defaulting witness, damages for .....	948
to determine adverse claims, by sureties .....	715
purchaser at Sheriff's sale, after eviction, may bring .....	458
when several, costs of one allowed only .....	694
costs allowed when, of course .....	693
defendant's cost must be allowed in certain .....	695
costs, when discretionary with Court .....	698
when costs in, may be severed .....	697
continued, costs may be imposed as condition of .....	700
in, by, or against an administrator, etc., costs in .....	702
if security be not given, may be dismissed .....	707
when Territory is party to, costs .....	708
when county is party to, costs .....	709
for usurpation of office or franchise, for damages .....	539
clerk must keep a registry of all .....	717
for condemnation of land .....	856
for condemnation of land, complaint must state what .....	857
for death or injury, who may bring .....	191
ib .....	192
personal property, for delivery of .....	297
personal property, for delivery of, affidavit, etc .....	298
form of, for foreclosure .....	468
of liens, for foreclosure .....	823
who may bring, for seduction .....	189
ib .....	190
when several, may be consolidated .....	713
limitations of, Sec. 141 to .....	180
limitations of, how affected .....	6
to postpone, for absence of testimony .....	364
may be postponed, for determination of claims .....	509
when court may postpone, Sec. 586 to .....	588
on failure of verdict or discharge of jury, may be retried .....	380
receivers have power to bring, when and how .....	345
after judgment, may proceed against one of several defendants ..	352
to release attachment, before whom taken .....	335
may be commenced on undertaking, when .....	333
on submission to arbitration, revoked .....	884
successive, on same contract .....	712
change of place of trial of, Sec. 210 to .....	213
bonds in, not required of Territory .....	722
Clerk, when to take testimony on trial of .....	716
facts not in issue, how tried .....	140
limitations on the right to change .....	545
to what court transferred .....	546

<b>ACTIONS—(Continued.)</b>	<b>Section.</b>
proceedings after change of place of.....	547
effect of order changing place of.....	548
certain, must be transferred to District Court.....	549
Redemptioner or debtor may bring, for rents and profits.....	457
plaintiff must file notice of pendency of.....	490
another, pending ground for demurrer.....	232
when deemed pending.....	714
personal, may be had for lien of labor.....	828
to redeem mortgage, except when.....	166
<b>JUSTICES' AND PROBATE COURTS—</b>	
place of trial of, Sec. 543 to.....	549
civil, to be brought in defendant's township.....	543
when to be brought elsewhere.....	543
after change of place of, proceedings in.....	547
manner of commencing, Sec. 550 to .....	561
who may appear.....	553
for arrest of defendant in civil, Sec. 572 to .....	577
claim and delivery, how enforced in .....	582
when defendant fails to appear, judgment .....	583
against defendant on demurrer, judgment.....	584
by attachment, Sec. 578, to.....	581
pleadings in, Sec. 562 to.....	571
provisions of Code applicable to.....	636
<b>ADJOURNMENT—</b>	
of District Court.....	28
of Court on absence of Judge.....	48
of drawing of jury when officers are absent.....	92
on, of Court, disposition of jurors' ballots.....	95
may be, while jury is absent.....	381
final, for the term, discharges the jury .....	381
of Supreme Court, when .....	23
in case of, testimony to be taken by deposition.....	365
effect of, to non-judicial day .....	47
<b>ADMINISTRATOR—</b>	
may sue without joining <i>cestui que</i> trust.....	184
<b>ADMISSION—</b>	
of attorney to practice, certificate of.....	113
application of, for, testimonials required of what .....	114
certificate of, of attorney, when granted.....	115
by failure, to verify answer.....	245
of service, how made.....	224
of testimony, avoids postponement.....	364
of genuineness of instrument, if answer not verified.....	246
execution of instrument, unless denied by plaintiff.....	247
exception to preceding section.....	248
<b>ADMONITION—</b>	
of Court to jury on separation.....	375

ADVERSE CLAIM—	Section.
to real property, how determined.....	476
to personal property, how determined.....	715
ADVERSE POSSESSION—	
relation of landlord and tenant, as affecting.....	151
by actual occupation under claim of title.....	149
under written instrument or judgment.....	147
ib.....	148
by occupation not under written instrument.....	150
ADVERSE PARTY—	
how known in civil actions.....	139
when deemed to have excepted to verdict, ruling, decision, etc....	403
exceptions, how settled, upon notice to.....	406
may file counter affidavits, when.....	413
who is, on appeal.....	641
in intervention.....	202
writings in possession of, notice to be given to.....	924
AFFIDAVIT—	
for what purposes used.....	954
before whom, may be taken in this Territory.....	957
when made in another State or Territory, before whom taken.....	958
when made in foreign country, before whom taken.....	959
when made before Judge of Court out of this Territory to be certified by Clerk of Court.....	960
for arrest of judgment debtor on supplementary proceeding.....	461
must contain what, to obtain writ of attachment.....	319
that a contempt has been committed.....	832
to obtain injunction.....	311
to be served with injunction.....	311
of confession of judgment by defendant.....	777
requisites of for writ of mandate.....	739
of service of summons, Sec. 219 to.....	224
for service of summons on non-residents.....	221
of service of summons.....	224
to obtain order of arrest.....	273
on arrest, copy to be given to defendant.....	276
requisites of, for writ of prohibition.....	752
on motion to continue cause.....	364
for order allowing amendment to pleadings.....	267
in Justice's and Probate Court, necessary for order of arrest.....	574
of plaintiff, denying admissibility of copy of instrument.....	247
on motion to vacate order of arrest.....	295
in replevin, where delivery is claimed.....	298
service of, in replevin.....	300
on bond, in replevin.....	301
on bond, in replevin, where redelivery is claimed.....	302
of title by claimant, other than defendant.....	307
in replevin, where to be filed.....	308

<b>AFFIDAVIT—</b> ( <i>Continued.</i> )	Section.
for order for examination of prisoner as witness.....	952
for postponement of trial.....	588
of party applying for postponement.....	588
as to unknown non-resident party in partition.....	492
for publication of summons in partition.....	492
for writ of review, by what party.....	728
to reality of controversy in submitting action.....	780
by elector, to contest election.....	762
to accompany process against joint debtors .....	674
for arrest of usurper of office.....	536
of applicant to perpetuate testimony.....	986
may be taken, when, where, and by whom.....	66
of concealment of witness.....	944
to cost bill on judgment.....	703
of justification by sureties to bonds.....	721
not affected by not giving title to action.....	711
by bail in justification.....	287
in verification of pleadings.....	245
by non-resident, corporation.....	245
for new trial, misconduct of jury, Subd. 2.....	411
of newly discovered evidence, Subd. 4.....	411
for new trials, when to be made.....	412
when to be filed for new trial.....	413
on application to dissolve injunction.....	316
in objections to referee may be read.....	398
by redemptioner, Subd. 3.....	455
to copy of assignment, Subd. 2.....	455
in opposition to discharge of attachment.....	338
in proceedings supplementary to execution.....	461
for writ of injunction, Subd. 2.....	310
of exemption from arrest.....	981
of printer to publication, evidence.....	955
where filed, of printer.....	956
by sole trader, form of.....	892
of filing award of judgment.....	880
of property or debts due judgment debtor.....	463
<b>AFFIRMATION—</b>	
included in oath.....	13
optional to swear or affirm, form of.....	996
<b>AFFIRM—</b>	
may, instead of swear.....	996
<b>AGE—</b> See INFANT.	
<b>ALIEN—</b>	
limitation in time of war not computed against.....	172
<b>ALIENATION—</b>	
of real property cannot prejudice in action to recover.....	485

<b>ALLEGATIONS—</b>	<b>Section.</b>
formal, are pleadings.....	226
denial of, in answer.....	237
in complaint, deemed true unless controverted by answer.....	259
material, defined.....	260
when not deemed at variance.....	265
against joint debtors in pleadings .....	676
to be construed liberally.....	249
redundant, to be stricken out.....	250
essential, defined.....	260
answer to contain what.....	237
of complaint, how denied.....	237
essential to obtain writ of injunction.....	310
must be supported by verification.....	311
<b>ALLOWANCE—</b>	
of costs in civil actions to plaintiff of course.....	693
of costs in civil actions to defendant of course.....	695
of costs discretionary with Court.....	696
<b>ALTERATION—</b>	
in writing, must be accounted for by party producing it.....	940
<b>AMBIGUITY—</b>	
in complaint ground for demurrer.....	232
<b>AMENDMENT—</b>	
to complaint, how filed and served.....	234
when Court may order, of pleadings.....	263
ib.....	264
to pleadings of course after demurrer.....	266
to pleadings and proceedings generally, how made.....	267
to pleadings, where complaint is in fictitious name.....	268
Court may order, of process.....	42
of pleadings in Justice's and Probate Courts.....	570
terms of, may be imposed when.....	267
when permitted to complaint.....	261
to be served on opposite party, and filed.....	262
in furtherance of justice.....	267
on affidavit of merits.....	267
<b>AMICABLE ACTION—</b>	
submission of controversy, how made.....	780
judgment in, how entered.....	781
judgment in, how enforced.....	782
<b>ANSWER—</b>	
citation of attorney to answer accusation.....	130
to accusation, how made.....	132
if demurrer overruled, accused must.....	134
on intervention by assignee, or transferee.....	202
waives summons by.....	215
when defendant must file, various times given.....	216
part of pleadings, demurrer to.....	241

<b>ANSWER—</b> ( <i>Continued.</i> )	Section.
may demur at same time.....	233
to amended complaint.....	234
objections to complaint taken by, when.....	235
to complaint, what to contain.....	237
may contain several defenses, or cross demands.....	241
when contains new matter, plaintiff may demur.....	243
verification of.....	245
to complaint on written instrument.....	246
copy of written instrument, when deemed admitted.....	247
sham and redundant matter in, may be stricken out.....	250
in actions for libel and slander.....	258
when deemed controverted.....	259
supplemental, allowed on motion, when.....	261
may be amended.....	266
in certain case time for filing, may be extended.....	267
return of property required before.....	297
when injunction may issue after filing.....	312
judgment on failure to, by default.....	356
issue of law raised by demurrer to.....	358
issue of fact raised by.....	359
court may require judgment debtor to appear and.....	460
counter claim in, defined.....	238
omission to set up counter claim fatal.....	239
ib.....	567
takes place of cross-bill.....	240
grounds of demurrer to what.....	244
needs no verification denying execution of writing, when.....	248
to be liberally construed.....	249
need not set out account, when.....	251
must describe real property, how.....	252
how to plead a judgment.....	253
how to plead condition precedent.....	254
how to plead statute of limitations.....	255
how to plead private statute.....	256
must be filed with the clerk, and served.....	262
when issues arise on, what they are.....	357
concerning property by judgment debtor.....	461
by person or corporation as to debts, etc., of judgment debtor....	463
refusing to, punished as for contempt.....	467
in probate and justice's court.....	566
in proceedings for contempt, on arrest.....	838
in action for partition, what to contain.....	493
disclaimer in action to quiet title.....	477
must set up value of improvements as set-off, when.....	479
material allegations in, defined.....	260
in proceedings after judgment against joint debtors.....	675

<b>ANSWER—</b> ( <i>Continued.</i> )	<b>Section.</b>
to petition for mandate, how made.....	742
ib .....	747
to complaint amended.....	571
<b>APPEALS—</b>	
<b>TO SUPREME COURT—</b>	
what may be reviewed on, in civil actions.....	639
party aggrieved may take.....	641
within what time, may be taken.....	642
how taken.....	643
preparation for, by exceptions, see Secs. 402 to.....	409
undertaking on, to be filed in five days.....	644
undertaking on, from money judgment.....	645
from judgment for delivery of documents.....	646
from judgment directing execution of conveyance.....	647
stay of proceedings on.....	649
effect on attachment.....	649
by executor, administrator, or trustee, Court's discretion in.....	649
undertaking on, where real property in action.....	648
undertaking on, may be in one instrument.....	650
justification of sureties on bond of.....	651
other undertakings on.....	652
what papers used on, from judgment.....	653
what papers used on other.....	654
what papers used on appeals when new trial asked.....	655
papers and copies on, how certified.....	656
when, may be dismissed.....	657
when may not be dismissed.....	657
from controversy without action.....	782
effect of dismissal.....	658
what reviewed on, from judgment.....	659
remedial powers of Court on.....	660
remittitur on judgment on certified, how.....	661
costs on.....	704
<b>DISTRICT COURT—</b>	
from, when may be taken.....	642
from what taken.....	642
from, to Supreme Court, in what cases.....	642
who may appeal to, and within what time.....	665
what notice must contain.....	665
statement on, what to contain.....	666
statement must be prepared within what time.....	666
amendments to, and filing statement, etc.....	666
when no statement is required.....	667
trial de novo on.....	667
when transcript on, to be certified up.....	663
what transcript must contain.....	668
undertaking on appeal, what, etc.....	669



<b>APPEALS (To District Court)—</b> <i>(Continued,)</i>	Section.
supersedeas to execution, if issued.....	670
costs on execution must be first paid.....	670
proceedings on appeal in District Court.....	671
conduct of the trial, etc.....	671
<b>PROBATE COURT—</b>	
to Supreme Court, from what.....	662
administrator's official bond is appeal bond on.....	663
effect of appellate judgment on acts.....	664
<b>APPEARANCE—</b>	
of all parties at place appointed to hold Court.....	51
of accused attorney to answer proceedings.....	131
of married woman, how, when, and by whom.....	185
required in summons.....	216
service of summons, written admission.....	224
voluntary, equivalent to service of summons.....	225
of judgment debtor, by order of Court.....	460
proceedings to compel, of judgment debtor.....	461
what constitutes, on part of defendant.....	688
by demurrer, answer, or notice.....	688
failure in, at trial, waiver of findings.....	392
failure in, at trial, waiver of jury.....	389
failure in, in Justice's Court, trial to proceed.....	596
in Probate Court, id.....	596
in writing, waives summons and service.....	215
<b>APPELLANT—</b>	
party aggrieved may become.....	641
what he may appeal from to Supreme Court.....	642
what he may appeal from District Court.....	642
what, from Probate Court.....	662
what, to District Court.....	665
undertaking to be filed by.....	644
executors and administrators as, need not file bond.....	649
must furnish what papers.....	653
to furnish statement and notice, when.....	655
how to prepare to become. (See EXCEPTIONS).....	402
See APPEALS.	
<b>APPLICATIONS—</b>	
to become sole trader, Sec. 885 to .....	893
for new trials, Sec. 410 to .....	415
for change of name, Sec. 871 to.....	874
for change of venue. (See PLACE OF TRIAL) .....	210
for exercise of right of eminent domain.....	857
for dissolution of corporation.....	845
for liens for mechanics and others, Sec. 815 to .....	829
for discharge of person held on civil process, Sec. 783 to.....	794
for entry of confession of judgment, Sec. 776 to .....	779
for contest of election, Sec. 758 to.....	775

APPLICATION— ( <i>Continued.</i> )	Section.
for writs of review, mandate, and prohibition .....	755
for writ of mandate .....	741
for writ of review .....	728
for admission to bar as attorney .....	114
for substitution in case of death, etc., of party .....	200
for publication of summons .....	221
to file supplemental pleading .....	261
to make amendments to pleadings, etc. .... 267,	268
for arrest in civil cases, Sec. 270 to .....	296
for claim and delivery of personal property, Sec. 297 to .....	308
for injunction writ of, Sec. 309 to .....	317
for attachment, Sec. 318 to .....	340
for receivers, Sec. 341 to .....	346
for judgment by default .....	356
for postponement of trial .....	364
for reference to be ordered, Sec. 394 and .....	395
to Supreme Court for removal of case, on refusal of the Court be- low to allow exceptions .....	408
for writ of execution .....	430
for execution after death of party .....	435
for redemption of property, Sec. 451 to .....	453
for examination of party, etc., after execution, Sec. 460 to .....	467
for foreclosure of mortgages, Sec. 468 to .....	470
to determine conflicting claims to realty, Sec. 476 to .....	486
in partition, Sec. 487 to .....	533
for removal from office, Sec. 534 to .....	542
to amend pleadings in Justice's and Probate Courts .....	570
for postponement of trial in Justice's and Probate Courts .....	588
for abstract of judgment in Justice's and Probate Courts .....	608
for writ of execution from Justice's and Probate Courts .....	612
for renewal of execution in same .....	614
for one Justice to act for another .....	633
for judgment against joint debtors not summoned .....	672
for inspection of writings .....	679
by way of motion and notice thereof, Sec. 680 to .....	684
for cost, by filing cost bill .....	703
for security for costs .....	706
to supply loss of paper .....	710
for consolidation of actions .....	713
for possession to realty prior to action .....	797
to punish for contempt .....	832
to vacate award .....	881
to correct award .....	882
to produce writing, Sec. 924 to .....	925
for warrant to arrest witness .....	949
for Commission to take deposition .....	963
by notice to take deposition .....	968
to perpetuate testimony .....	986

<b>APPRAISERS—</b>	Section.
Probate Court has power to appoint.....	31
<b>ARBITRATION—</b>	
who may submit controversy, what, and exception.....	875
submission to, in writing, to one or more.....	876
stipulation in what.....	877
duty of Clerk in submission by Court.....	877
order cannot be revoked.....	877
award may be compelled.....	877
arbitrators' powers defined.....	878
arbitrators must be sworn.....	879
how questions determined in.....	879
award and proceedings thereunder.....	880
proceedings to vacate or otherwise dispose of award.....	881
grounds for revocation or resubmission.....	881
grounds for modification or correcting.....	882
what Court may do with award.....	882
decision of Court on motion appealable.....	883
judgment before motion non-appealable.....	883
submission being revoked, what may be recovered.....	884
all arbitrators must meet, but the majority control.....	718
title to real property cannot be submitted to.....	875
<b>ARGUMENT—</b>	
order of, on trial.....	371
duty of Clerk when cause reserved for.....	383
when cause may be reserved for.....	418
may be brought before Court for, by either party.....	419
<b>ARREST—</b>	
order for, on what obtained.....	273
no one subject to, in civil action other than.....	270
in what cases it may be made.....	271
order for, by whom made.....	272
written undertaking given prior to order.....	274
when order may be made, its form.....	275
what Sheriff must have and do.....	276
how made, disposition of defendant.....	277
when defendant may be discharged from.....	278
bail of defendant, how given and for what.....	279
surrender of defendant.....	280
what sureties may do to surrender defendant.....	231
bail, when exonerated.....	231
bill may be proceeded against, when.....	282
bail exonerated by death, etc., of defendant.....	283
return and other proceedings of Sheriff.....	284
justification of sureties and notice of.....	285
new undertaking, when to be given.....	285
qualification of bail.....	286
justification of bail, how made.....	287

**ARREST—(Continued.)****Section.**

certificate of Judge or Clerk to sufficiency of bail.....	283
when Sheriff exonerated from liability.....	288
deposit of money instead of bail.....	289
what may be done when bail reduced.....	289
duty of Sheriff to certify to deposit.....	289
duty of Sheriff to pay deposit into Court.....	290
substitution of bail for deposit.....	291
deposit to be refunded.....	291
final disposition of the deposit.....	292
when judgment for defendant what done.....	292
if defendant escape, Sheriff liable.....	293
how Sheriff may relieve himself.....	293
proceedings on judgment against Sheriff.....	294
motion to vacate order of arrest or reduce bail.....	295
what affidavits may be used on this motion.....	295
proceedings on the application.....	296
affidavit for, in Justice's and Probate Courts.....	574
for contempt, and bail allowed.....	836
grounds of, in Probate and Justice's Courts.....	572
when order may be executed in any part of Territory.....	573
defendant to be taken before court or justice, proceedings there..	575
officer who makes, to notify plaintiff and his return.....	576
defendant to be kept till discharged.....	577
of witness, officer liable for, when.....	931
cannot be made except under Code.....	270
of judgment debtor supplementary to execution.....	461
no woman is subject to.....	572
of one who usurps office, when.....	536
of witness refusing to testify.....	950
of witness cannot be made, when.....	980
of witness when a contempt.....	979
plaintiff may order defendant discharged from.....	793
actions for malicious, may be united with what.....	231

**ARTICLES—**

of Code, how construed, 2 to.....	14
-----------------------------------	----

**ASSAULT AND BATTERY—**

jurisdiction of Justice Court in.....	39
civil actions for, may be united, Subd. 6.....	231

**ASSESSMENT—**

to be paid by redemptioner.....	453
of property for condemnation, how made.....	861
of damages by jury.....	356
of treble damages in forcible entry and detainer.....	475
of costs in partition suits.....	503

**ASSIGNEE—**

of thing in action, may sue without prejudice, etc.....	183
of judgment debtor, is a redemptioner.....	451

<b>ASSIGNEE—</b> ( <i>Continued.</i> )	Section.
of purchase at Sheriff's sale, dispossessed for irregularity.....	458
of purchaser at Sheriff's sale, may revive judgment, when.....	458
of purchaser failing to give redemptioner statement.....	457
of purchaser entitled to conveyance, when.....	453
<b>ASSIGNMENT—</b>	
of thing in action not to prejudice set-off.....	183
of accounts, assignee, if real, must sue in his own name.....	182
of account not set up as counter claim gives no action.....	239
one who becomes redemptioner by, must produce copy.....	455
<b>ASSIGNOR—</b> See <b>ASSIGNEE</b> ; <b>ASSIGNMENT</b> .	
<b>ASSOCIATIONS—</b>	
how sued.....	203
See <b>CORPORATION</b> .	
<b>ATTACHMENT—</b>	
in what cases issued.....	318
affidavit on, what to contain.....	319
undertaking on.....	320
writ of, and its requirements.....	321
what may be attached.....	322
time and manner of executing writ of.....	323
released by undertaking.....	321
ib.....	335
ib.....	336
several writs of, may be issued at the same time.....	321
rights and shares in stock corporations subject to.....	322
of real property standing in name of defendant.....	323
of real property standing in name of other persons, belonging to defendant.....	323
of personal property.....	323
of stocks and shares.....	323
of debts and credits.....	323
of credits and personal property in hands of other persons.....	324
liability of such persons on.....	325
such persons may be examined on oath.....	326
Sheriff to make inventory of property, and return with writ of....	327
Court may order property sold under, when to the interest of parties	329
Sheriff may sell perishable property.....	328
ib.....	329
Sheriff may collect debts and credits under.....	328
when personal property claimed by third party, how determined..	330
judgment to be satisfied out of property attached.....	331
after judgment satisfied, remainder to be paid to defendant.....	332
undertaking on release from, may be prosecuted.....	333
effect of judgment for defendant on.....	334
application for order to discharge from.....	335
motion made on affidavit for such order may be opposed.....	338
discharge of.....	335

<b>ATTACHMENT—</b> ( <i>Continued.</i> )	<b>Section</b>
discharge of.....	337
ib .....	339
when writ of, to be returned.....	340
<b>IN PROBATE AND JUSTICE'S COURT—</b>	
affidavit for.....	578
what undertaking required.....	579
writ of, what must require.....	580
duty of officer under.....	580
Secs. applicable to.....	581
to compel witness to attend, who may.....	64
may issue to compel witness to attend.....	949
<b>ATTENDANCE AT COURT—</b>	
of witness by subpoena.....	941
by witness with books.....	941
subpoena, how issued.....	942
service to procure witness.....	943
how procured, if conceded.....	944
when, may be compelled.....	945
warrant to compel.....	949
if witness is prisoner.....	951
on whose motion required.....	952
of party. (See SUMMONS).....	215
by citation—See CITATION; WITNESS; SUMMONS.	
<b>ATTORNEY AT LAW—</b>	
Judges not to act as, in their own Courts.....	60
certain Judges precluded from practice.....	61
who may be admitted as, by Supreme Court only.....	115
what constitutes license.....	115
qualifications.....	114
oath, what to perform.....	116
of other States, may be admitted.....	117
roll of, to be kept by each Clerk.....	118
penalty for practicing without license.....	119
general duties of.....	120
general authority of.....	121
when and how changed.....	122
notice of change and substitution.....	123
death or removal of.....	124
removal or suspension.....	125
conviction of felony, moral turpitude.....	126
proceedings for removal or suspension.....	127
accusation made by another to be written.....	128
what accusation must charge.....	129
charge must be verified.....	129
duty of court to issue citation, when.....	130
accused to appear and answer.....	131
accused may demur or answer.....	132

ATTORNEY-AT-LAW— ( <i>Continued.</i> )	Section.
demurrer or objection to be written.....	133
if demurrer overruled, he must answer.....	134
judgment on refusal or plea of guilty.....	135
trial on plea of not guilty.....	135
Court may refer to take testimony.....	136
judgment of the Court must be what.....	137
what acts subject him to contempt of Court.....	830
appearance by waiver of summons.....	225
appearance by, in Justice's and Probate Courts.....	552
how and who may appear and act as, in Justice's Court.....	553
must not be receiver.....	343
measure and mode of compensation of.....	692
amendments to be served on, how.....	234
exemption from service on jury.....	81
privileged communication to.....	899
to instruct Sheriff how to execute attachment.....	324
may require what of officer in replevin.....	299
may waive jury trial, how.....	389
may waive findings of fact, how.....	392
papers may be served on.....	689
who may act, as in Justice's and Probate Courts.....	553
pleadings to be subscribed by.....	245
name of plaintiff, to be indorsed on summons.....	216

**BAIL—**

when given, defendant to be discharged.....	278
how given after arrest.....	279
may surrender defendant, by whom and when.....	280
what may do to surrender defendant to Sheriff.....	281
when discharged finally.....	282
are exonerated by death, etc.....	283
not accepted by plaintiff, when.....	284
justification, notice of, and how made.....	285
qualifications of.....	286
what must do to justify.....	287
plaintiff may examine on justification.....	287
when found sufficient what Judge or Clerk must do.....	288
deposit, instead of.....	289
may be given and deposit withdrawn.....	291
when finally charged.....	281
Sheriff liable as, when.....	293
usurper of office to give, when.....	536
in cases of contempt.....	836
judgment against Sheriff as.....	294
defendant on, may apply to vacate order.....	295
may be reduced, when.....	296
by judgment debtor in proceedings supplementary to execution...	461



<b>CERTIFICATE—</b> ( <i>Continued.</i> )	<b>Section.</b>
of sale of property not movable under execution.....	449
of the sale of realty under execution.....	450
purchaser to file duplicate, when.....	450
of service of summons, to show what.....	224
to papers and transcript, on appeal.....	656
to public writings in evidence.....	919
to transcript from sister State or Territory, what to state.....	918
to judicial record of sister State or Territory.....	911
to judicial record of foreign country.....	912
every one entitled to, to copy of public writings.....	902
public officer to give, to copies.....	903
seal to, as evidence.....	907
and seal to foreign judicial record.....	913
to public or private writings, as evidence.....	915
to judgment, on review.....	735
to transcript to be reviewed.....	730
of purchase of land primary evidence of.....	920
official contents of, to be evidence.....	919
<b>CERTIORARI, WRIT OF—</b>	
to be known as writ of review.....	726
See REVIEW.	
<b>CHALLENGE—</b>	
to jurors, number of peremptory.....	367
to jurors, for cause, what sufficient.....	368
to juror, for cause, how tried.....	369
to jurors in Justices' and Probate Courts.....	597
See JURY.	
<b>CHAMBERS—</b>	
to be provided for Judges on order, when.....	52
powers and duties of District Judges at.....	58
may do at, all acts of certain character.....	63
writs of review, mandate, and prohibition, ordered at.....	755
See JUDICIAL OFFICER.	
<b>CHANGE—</b>	
<b>OF NAMES—</b>	
jurisdiction of applications for.....	871
petitions for, what to show.....	872
publication of petition for, how made.....	873
hearing and proceedings thereon.....	874
<b>OF PLACE OF TRIAL—</b>	
grounds for.....	210
to what Court may be transferred.....	211
pleadings, etc., to be transmitted. Costs to be paid by whom....	212
on what grounds may be had, in Justice's and Probate Courts....	544
<b>OF COURT—</b>	
Justice, when.....	623
to be had not more than once.....	545

<b>CHANGE, OF COURT—</b> <i>(Continued).</i>	<b>Section.</b>
to what Court changed.....	546
proceedings on, when once ordered.....	547
jurisdiction of the Court receiving transfer.....	548
Justice and Probate Court to transfer to District Court trial of title to realty.....	549
<b>OF JUDGES—</b>	
one District Judge may act for another, when.....	57
Governor may designate one for another, when.....	57
other cases when, made.....	
<b>OF PARTIES—</b>	
by death, marriage, or interest.....	200
<b>CHARGE—</b>	
to jury, of the Court.....	372
when, to be given in order, Subd. 6.....	371
Judge must furnish copy of, if demanded.....	372
in, may state the testimony.....	372
further, in presence of parties.....	378
See TRIAL.	
<b>CITY—</b>	
how summons served against.....	220
no surety required of, in actions by.....	722
<b>CIVIL ACTIONS—</b>	
must be commenced, when.....	141
limitations of, in actions concerning realty.....	143
within what time to begin against corporation.....	177
arising in other States and Territory, when to commence.....	179
how they are commenced.....	214
right of existing, not affected by Code.....	5
for condemnation may be united.....	857
may be arbitrated.....	875
See ACTIONS.	
<b>CLAIM—</b>	
of a third party, in replevin.....	307
of a third party, of property attached.....	330
of a third party, of property under execution.....	438
of liens, when to be filed.....	820
adverse, to be determined by action.....	715
same, as to real property.....	476
<b>CLAIM AND DELIVERY—</b>	
of personal property, when may be.....	297
affidavit and its requisites.....	298
requisition to sheriff to take and deliver the property.....	299
security on the part of the plaintiff.....	300
serving the order.....	300
exception to sureties and proceedings thereon.....	301
failure to except.....	301
defendant, when entitled to redelivery.....	302

CLAIM AND DELIVERY—( <i>Continued</i> ).	Section.
justification of defendant's sureties.....	303
qualification of sureties .....	304
property, how taken, when concealed.....	305
property, how kept.....	306
of property by third person.....	307
notice and affidavit, when and where to be filed.....	308
judgment in the alternative.....	421
limitation of the action for the.....	158
proceedings for, in Justices' and Probate Courts .....	582
for specific, in actions for, verdict .....	387
execution for specific, to whom issued.....	436
execution for specific, to contain what, Subd. 5 .....	431
judgment for, how enforced.....	433
costs in action for, recovered, Subd. 2.....	693
CLERGYMAN OR PRIEST—	
privileged communication to.....	899
See PRIVILEGED COMMUNICATION.	
CLERK—	
must take down testimony, when.....	716
how must indorse complaint.....	215
to keep register of actions.....	717
to issue citation in contest of election.....	766
of contest of election, must give notice.....	765
issue subpoenas in contest of election.....	767
must file complaint and issue summons.....	215
duty in entering confession of judgment.....	778
enter note of stipulation to arbitrate.....	877
file such stipulation.....	877
to transmit what, in action for mandate.....	746
to return transcript with mandate.....	729
list of persons to serve as jurors to be filed with.....	86
duty of, on receiving lists.....	87
to notify Judge and Sheriff of time of drawing jury.....	90
to draw the jurors.....	91
duty of, if officers fail to attend drawing, Secs. 92 and.....	93
how must conduct the drawing.....	94
duty of, in regard to the ballots, after adjournment of Court.....	95
must furnish copy of list on application.....	96
to call list of jurors.....	108
must keep roll of attorneys.....	118
to transmit papers on transfer of cause.....	212
duty of, after judgment on transferred cause.....	213
duty of, after receiving transcript of proceedings on such cause. .	213
duty of, when complaint filed.....	215
summons must be signed by.....	216
affidavit for order of arrest to be filed with.....	273
to issue writ of attachment.....	319

<b>CLERK—</b> <i>(Continued)</i> .	Section.
money to be deposited with.....	347
duty of, on receiving such deposit.....	348
to enter dismissal of suit.....	354
to enter default of defendant.....	356
to enter cause on calendar.....	362
to draw jury, when.....	366
to read verdict to jury.....	382
to enter verdict on minutes.....	388
special verdict to be filed with.....	385
to enter waiver of jury trial on the minutes.....	389
to enter agreement of reference on minutes.....	394
exceptions to be filed with.....	405
affidavit on motion for new trial to be filed with.....	412
notice of motion for new trial to be filed with.....	413
to enter judgment.....	418
to keep judgment book.....	422
shall make judgment roll.....	424
how shall keep judgment docket.....	426
to arrange the several dockets.....	427
duty on filing judgment roll.....	425
duties of, on appeals, Sec. 642 to .....	661
to file notice of appeal .....	643
to file undertaking on appeal.....	643
copies of certain papers on appeal to be certified by .....	656
certificate of, to remittitur .....	661
<b>CODE OF CIVIL PROCEDURE—</b>	
when takes effect.....	1
not retroactive.....	2
construction of .....	3
construction of, with regard to existing laws .....	4
actions not affected by.....	5
limitations continue to run .....	6
terms used in, defined.....	13
provisions of, apply to enforcement of liens.....	829
apply to Justices' and Probate Courts, what provisions .....	636
for condemnation of lands, what applicable .....	869
<b>CODICILS—</b>	
included in will.....	13
<b>COMMENCEMENT OF ACTION—</b>	
by filing complaint.....	214
summons, how signed and directed.....	216
by alias summons, when.....	217
lis pendens filed, when.....	218
in Justices' and Probate Courts.....	550
See ACTIONS.	
<b>COMMISSION—</b>	
to take testimony in this Territory, when may issue.....	962

COMMISSION—(Continued).	Section.
cases in which to issue enumerated.....	962
to take testimony out of the Territory.....	963
upon what, how, and to whom issued.....	963
interrogatories annexed to.....	964
or it may be without interrogatories.....	964
authorizes what to be done.....	965
not being returned, does not postpone case.....	966
deposition taken by, who may use.....	967
how to be returned.....	965
See JUSTICES' COURT; WITNESS; EVIDENCE.	
COMPENSATION—	
of attorneys, to be agreed on.....	692
tenants entitled to, in partition suits.....	513
when to be fixed by the Court.....	514
when, to make land equal in partition.....	527
allowed for land condemned.....	862
of referees and surveyor, in partition.....	503
COMPLAINT—	
when filed, action deemed commenced.....	168
by intervenor in.....	202
to be answered as if an original.....	202
actions commenced by.....	214
how indorsed.....	215
copy of, when to be served with summons.....	219
grounds of demurrer to.....	232
demurrer to, must distinctly specify grounds of objection.....	233
objection to, may be made by answer.....	235
objections to, when deemed waived.....	236
answer to, what to contain.....	237
verification of.....	245
upon written instrument.....	246
to describe real property, how.....	252
what to contain in actions for libel and slander.....	257
material allegations in, deemed true unless specifically denied....	259
supplemental, may be allowed on motion.....	261
parties may amend, after demurrer, of course.....	266
may be amended in other cases, when.....	267
when injunction may be granted on.....	310
when injunction may be granted on.....	311
what to contain to authorize an injunction.....	310
on injunction, must be verified.....	311
issue of law arises by demurrer to.....	358
issue of fact arises by answer controverting.....	359
in partition action.....	488
ib.....	496
ib.....	498
pleading by plaintiff.....	228

<b>COMPLAINT—</b> <i>(Continued)</i> .	Section.
first pleading by plaintiff.....	229
must contain what.....	230
cause of action in.....	230
relief must be prayed for in.....	230
what causes may be joined in.....	231
how stated in.....	231
amendments to, how made and served.....	234
how conditions pleaded in.....	254
supplemental, when and what.....	261
constitutes part of judgment roll.....	424
in usurpation of office, action.....	536
in Justice's and Probate Courts.....	564
in forcible entry and detainer.....	804
for condemnation of lands.....	856
for dissolution of corporation.....	845
in contested elections.....	762
amended, in certain events.....	810
See ACTIONS; DEMURRER.	
<b>COMPROMISE—</b>	
offer to, and proceedings on.....	678
offer in Justice's and Probate Courts.....	606
effect of offer on costs.....	606
effect of, on costs elsewhere.....	678
offer not accepted, cannot be proved.....	678
<b>COMPUTATION OF TIME—</b> See TIME.	
<b>CONCEALED—</b>	
property claimed, how obtained by Sheriff.....	305
defendant, how served with process.....	221
witness, how served with process.....	944
property fraudulently, defendant subject to arrest for.....	271
<b>CONDEMNATION OF LAND—</b> See EMINENT DOMAIN.	
<b>CONDITION—</b>	
precedent, how pleaded.....	254
<b>CONFESSION—</b>	
of judgment, when and how made.....	776
of judgment, what must set forth.....	777
of judgment, must be indorsed, filed, and entered, how, etc.....	778
of judgment, in Justices' and Probate Court, having authority, how entered.....	779
of judgment, for what it may be entered.....	776
<b>CONFLICT—</b> See CONSTRUCTION.	
<b>CONSANGUINITY—</b>	
disqualifies Judge, when.....	59
disqualifies juror, when.....	368
disqualifies referee, when.....	297
<b>CONSOLIDATION—</b>	
of actions condemning lands.....	857

<b>CONSOLIDATION—</b> <i>(Continued).</i>	<b>Section.</b>
of causes of action in one complaint.....	231
of actions, when may be ordered .....	713
<b>CONSENT—</b>	
to reference of cause.....	394
<b>CONSTABLE—</b> See JUSTICE'S COURT.	
<b>CONSTRUCTION—</b>	
of terms used in the Code.....	13
of the provisions of the Code.....	4
the common law rule of.....	3
on actions commenced.....	5
of statutes of limitation.....	6
of words conferring authority to three or more.....	11
of words and phrases used.....	12
of statute law or rule.....	14
civil and criminal remedies not merged.....	16
<b>CONTEMPT—</b>	
judicial officers may punish for, in what cases.....	65
application to Court for order refused, is a.....	68
of Probate and Justices' Courts, what acts constitute.....	617
how punished, when committed in presence of Justice.....	618
what punishment may be imposed by Justice.....	620
when not in presence of Justice.....	619
judgment against for, must be entered.....	621
acts constituting, enumerated.....	830
re-entry on realty, after eviction, is a.....	831
when punished summarily.....	832
when must be shown by affidavit.....	832
warrant, or notice to issue, when.....	833
bail may be given by one arrested for.....	834
warrant for, how executed.....	835
bail bond on, form of.....	836
warrant, how returned with undertaking.....	837
hearing the charge of.....	838
judgment and penalty, if guilty.....	839
to be imprisoned till performance, when.....	840
if party fails to appear, proceedings.....	841
illness, excuse for non-performance.....	842
confinement for.....	842
judgment in case of, final.....	843
provisions which do not apply to proceedings in.....	690
disobedience of subpoena a.....	947
forfeiture by witness.....	948
may arrest witness in.....	949
commitment in.....	950
See CITATION.	
<b>CONTESTING ELECTIONS—</b>	
who may contest, and grounds of contest.....	758



**CONTESTING ELECTIONS—***(Continued).*

Section.

irregularity and improper conduct of Judges.....	759
at, annual elections.....	759
when not to.....	760
illegal votes, when not to vitiate election.....	761
proceedings on contest.....	762
statement of cause of contest.....	763
when based on reception of illegal vote, contestant to deliver to respondent a list of votes claimed to be illegal.....	763
statement of cause of.....	764
want of form not to vitiate.....	764
Judge to hold term for trial of contest.....	765
Clerk to issue citation to respondent.....	766
witnesses, attendance of, how enforced.....	767
power of Court, adjournment of Court.....	768
rules to govern Court in trial of contest.....	769
Court may declare who was elected.....	770
fees of officers and witnesses.....	771
costs, judgment for.....	772
appeal, when to be taken.....	773
when election void, and office vacant.....	774
District office.....	775

**CONTINUANCE—**See POSTPONEMENT.**CONTRACTORS—**

liens, enforcement of .....	815
See LIENS.	

**CONTRACTS—**

conditions in, how pleaded.....	254
express or implied, joined, how.....	231
attachment may issue on, when.....	318
actions on, authorize arrests, when.....	271
in actions on, jury waived, when .....	389
judgment by default on.....	356
when judgment on, to be for gold coin.....	421
specific, enforced.....	421

**CONTRIBUTION—**

action for, by joint debtor or obligor .....	459
--	-----

**CONTROVERSY—**

submission of, without action .....	780
Court may decide.....	204
See ARBITRATION.	

**CONVERSION—**

of money or property ground for arrest .....	271
--	-----

**CONVENIENCE—**

of witness, change of venue for.....	210
--------------------------------------	-----

**CONVEYANCE—**

who may take acknowledgments of .....	66
mortgages not considered as, when .....	482
purchaser at Sheriff's sale or assignee entitled to .....	453

CONVICTION—	Section.
of attorney of felony, effect on license .....	126
COPARTNERSHIP—	
may be sued by firm name .....	203
COPY—	
of written instrument in complaint admitted, when .....	246
of complaint to be served with summons .....	219
of summons when being served .....	220
of summons to be mailed to defendant .....	222
of complaint, when served, jurisdiction had .....	225
of amendments to pleadings served .....	234
of affidavit to be given defendant, when .....	276
of undertaking by surety indorsed, authority to arrest .....	281
sheriff to return copy of undertaking, when .....	284
of affidavit and undertaking to be served, when .....	300
of complaint, etc., served with injunction .....	311
of attachment, how used by sheriff .....	323
of attachment, how used in garnishment .....	324
from receiving, garnishee bound .....	325
of papers to be supplied by redemptioner .....	455
of complaint in partition suits .....	493
of account is complaint in Probate and Justice's Court .....	564
of Justice's judgment to be filed .....	609
of notice of appeal, how served .....	643
of notice of appeal to be furnished on appeal .....	653
of notice of appeal to be furnished, when .....	654
of motion for new trial .....	655
to be certified, how, and by whom .....	656
of notice of appeal in Probate and Justice's Court .....	665
of docket, etc., on appeal .....	668
party may demand, of writings .....	679
of writ served by telegraph .....	691
of lost paper to supply original .....	710
of judgment in mandamus .....	735
of judgment to the return on mandamus .....	736
of verdict in mandamus trial .....	746
of notice served in forcible entry and detainer cases .....	798
of writing, when evidence .....	932
seal affixed to .....	907
copy of judicial record .....	911
copy of judicial record of foreign country .....	913
of official documents certified .....	914
public record of private writing .....	915
or transcript of Probate and Justice's docket .....	917
certificate to .....	918
what certificate must state .....	919

See SUMMONS ; CITATION ; NOTICE.

**CORPORATION—**

Section.

how summons to be served on.....	220
verification of pleading by officer of.....	245
when insolvent or dissolved, receiver for.....	341
voluntary dissolution of.....	844
application of, for dissolution in writing, and to set forth.....	845
application, by whom signed, and how verified.....	846
what order the Judge makes thereon.....	847
notice by publication, etc.....	847
proceedings to dissolve, Sec. 844 to.....	850
receivers or trustees for, when applied.....	342

**CORRECTION—**

of pleadings, etc., when allowed.....	267
of verdict, when permitted and directed for.....	383

**COSTS—**

on nonsuit, to be paid by plaintiff.....	354
on judgment by default.....	356
in foreclosure suits, how paid.....	468
prevailing party entitled to.....	693
when plaintiff cannot recover.....	477
in Justice's and Probate Court allowed to prevailing party.....	635
to be included in judgment by Clerk.....	705
must be taxed by the Court.....	607
in what cases allowed to plaintiff, of course.....	693
in what cases to defendant of course.....	695
when allowed to plaintiff, in only one of several actions.....	694
when to certain defendants, and not to others.....	697
when of appeal, discretionary with Court.....	698
of referees, what, except in agreed cases.....	699
on postponement, may be imposed as condition.....	700
on tender pleaded.....	701
against executor or administrator, how taxed up.....	702
memorandum of, when to be filed.....	703
memorandum of, when filed after remittitur.....	704
insertion of, in blank and docket, by Clerk.....	705
security for, when required.....	706
if security for, is not given action dismissed.....	707
against Territory, how paid.....	708
against county, how paid.....	709
of referees in partition, apportioned.....	503
in proceedings for condemning lands.....	868
in contested election cases.....	771
in usurpation of office, action.....	541
in partition, for abstract of title.....	533
lien of, in partition suit.....	531
and damages, on frivolous appeal.....	660
in disclaimer of title to reality.....	477
in what cases severed.....	697

## COUNSELORS AT LAW—

Section.

See ATTORNEYS.

## COUNTER CLAIM—

may be set up by answer.....	238
when omission to set up, fatal to.....	239
defined.....	238
what it arises from.....	238
effect of omission to set up, in Probate and Justices' Court.....	567
judgment for excess of.....	420
finding of the verdict in case of.....	386
demurrer to answer containing.....	243

## COUNTY—

service of summons on.....	220
costs against, paid how.....	709
cannot be required to give security for.....	722
verification of pleading by officer of.....	245
Probate Court in each.....	30
actions to be tried in which.....	205
ib.....	206
offense in two or more, where tried.....	206
trial of actions against or between.....	207
may be in any, unless defendant wishes change.....	209
in what, complaint filed, to be stated in summons.....	216
to be specified in complaint.....	220
District Judge of another, to hold Court in.....	57
Governor to designate Judge for.....	57

## COURTS, PROBATE—

has a seal.....	53
Clerk of, to keep the seal.....	54
to what seal of, need not be fixed.....	55
in contested elections.....	768
proceedings in, in contested elections.....	769
special terms of, for what purpose.....	765
appeals from, in what cases.....	662
transfer of cause from, to District Court.....	211

## COUNTY OFFICERS—

not subject to jury duty.....	81
contesting elections, Sec. 758 to.....	774
actions for usurpation, Sec. 534 to.....	542

See OFFICERS.

## COURTS—

of this Territory, where enumerated.....	17
of record, which are.....	18
manner of summoning jury for, of record.....	97
manner of summoning jury for, not of record.....	100
of record, may order jury drawn, when.....	98
proceedings in drawing.....	366
when not jurors enough, duty of.....	99

<b>COURTS—(Continued).</b>	<b>Section.</b>
District, Sec. 28 to.....	29
Probate, Sec. 80 to.....	34
Justices, Sec. 85 to.....	39
publicity of proceedings of.....	40, 41
powers incidental to, 42 to.....	44
seals of, Sec. 53 to.....	55
miscellaneous provisions respecting, Sec. 67 to.....	72
sittings of all, to be public.....	40
excepting in divorce suit.....	41
powers of, enumerated.....	42
of record may make rules.....	43
when such rules take effect.....	44
days on which, may be held.....	45
days when, not to be held.....	46
exception as to business.....	46
when a holiday interferes, what day is legal.....	47
if no Judge attends, what done.....	48
if none for a week, what done.....	49
place of holding, Judge may change.....	50
parties to appear at appointed place.....	51
rooms for, to be provided.....	52
what have seals.....	53
affixed to what, seal of.....	55
powers of Judges out of.....	63
powers of Judges in, Sec. 64 to.....	66
may determine controversies, when.....	204
when may order parties to be brought in.....	204
jurisdiction of, to which cause is transferred.....	212
where action is brought to be mentioned in summons.....	216
when acquires jurisdiction of action.....	225
name of, to be stated in complaint.....	230
may order bill of items of account.....	251
when may order amendment of pleadings.....	264
may allow amendments before or after demurrer.....	266
may impose terms on amendment.....	267
must disregard errors and defects in pleadings.....	269
may order arrest of defendant.....	272
to indorse allowance on bail bond.....	288
may grant injunction.....	309
when may grant injunction.....	310
when may not grant injunction.....	312
to restrain defendant till decision in injunction.....	312
to require security on injunction.....	313
may order hearing for.....	314
only, may enjoin corporations.....	315
may dissolve and modify injunction.....	316
may order property to be delivered after examination of garnishee.....	326

COURTS— ( <i>Continued</i> ).	Section.
may release attachment .....	336
may appoint receivers.....	341
deposit in.....	347
manner of enforcing order for deposit in .....	349
may render a several judgment.....	352
when may grant non-suit.....	354
may take account after default.....	356
may order account taken after default, by referees.....	356
to try issues of law.....	360
when may not grant continuance.....	364
to try challenges for cause.....	369
when to charge jury.....	371
where there are several defenses, Court to determine order of.....	371
how to charge jury.....	372
special instructions to jury by request of parties.....	373
may order sick juror to be discharged.....	379
may order cause to be re-tried.....	380
admonition by, to jury on separation.....	375
may adjourn in absence of jury.....	381
may direct sealed verdict.....	381
verdict may be corrected under advice of.....	383
when may order view of premises.....	374
when to try issues.....	389
to decide waiver of jury trial.....	389
decision of, when questions of fact are tried by it.....	390
may order reference.....	394
ib .....	395
ib.....	396
to dispose of objections to referees.....	398
parties may except to rulings, etc., of.....	402
adverse party, when deemed to except to certain rulings of.....	403
when may grant new trial.....	411
may compel satisfaction of judgment.....	429
may restrain commission of waste.....	456
may require appearance of judgment debtor.....	460
may order arrest of judgment debtor.....	461
may appoint referee for examination of judgment debtor.....	460
may require debtor of judgment debtor to be examined.....	463
may order debtor to apply debt to satisfy judgment.....	465
may forbid transfer of debtor's property.....	466
may punish for contempt.....	467
may decree sale of mortgaged property.....	468
to direct deposit of surplus money in foreclosure after sale.....	469
to order sale of property mortgaged when debt not all due.....	470
shall award treble damages in certain cases.....	472
ib.....	473
may order entry upon disputed property for survey.....	480

<b>COURTS—</b> <i>(Continued).</i>	Section.
may grant injunction during foreclosure, and after sale before conveyance.....	483
actions in partition in, Sec. 487 to.....	533
proceedings for usurpation of office or franchise, Sec. 534 to.....	542
in Justice's, proceedings in, Sec. 543 to.....	638
See JUSTICE'S AND PROBATE COURTS.	
proceedings in taking appeals generally, Sec. 639 to.....	661
appeals from District.....	642
appeals from Probate Court.....	662
appeals from Probate and Justice's Courts.....	665
appeals to District Court, Sec. 665 to.....	671
proceedings against joint debtors, Sec. 672 to.....	677
motions and orders in, Sec. 680 to.....	684
notices filing and service of papers in, Sec. 685 to.....	691
costs in proceedings in, Sec. 692 to.....	709
general provisions for, Sec. 710 to.....	723
special proceedings in writs of mandate and prohibition, Sec. 724 to.....	755
contesting elections, Sec. 758 to.....	775
summary proceedings, Sec. 776 to.....	814
enforcement of liens, Sec. 815 to.....	829
contempt, Sec. 830 to.....	843
voluntary dissolution of corporations, Sec. 844 to.....	850
eminent domain, Sec. 851 to.....	869
change of names, Sec. 871 to.....	874
arbitrations, Sec. 875 to.....	884
proceedings in Probate Courts, Sec. 543 to.....	638
sole traders, Sec. 885 to.....	895
<b>PROBATE COURT—</b>	
proceedings in, Sec. 543 to.....	638
<b>CREDIBILITY OF WITNESS—</b>	
impeachable in all cases.....	897
experts to prove unwritten laws.....	908
See WITNESS; EVIDENCE.	
<b>CREDITORS—</b>	
are redemptioners.....	451
may discharge imprisoned debtor, when.....	793
<b>CROSS COMPLAINT—</b>	
all matters of, to be pleaded in answer, under the Code, Sec. 237 to	241
<b>CROSS DEMANDS—</b>	
what deemed, compensated.....	240
failure to set up, fatal to, when.....	239
what answer may contain.....	237
defined as counter claim.....	238
<b>CUSTOMS—</b>	
may be proved as to mining claims, etc., when.....	486
of sister States, as unwritten law, how proved.....	908



CUSTODIAN—		Section.
of public writings, must allow inspection of.....		902
of writing or paper, Court may direct inspection of, etc.....		679
of public writings, to give copy, when.....		903
of prisoner witness, to produce him when.....		953
of jail, to produce witness prisoner.....		951
See SHERIFF.		
DAMAGES—		
complaint to state amount of, demanded.....		230
what claims for, may be united.....		231
on judgment by default, how assessed.....		356
jury to assess in certain cases.....		357
excessive, ground for new trial.....		411
may be recovered in actions for nuisance.....		471
treble, allowed in actions for waste.....		472
treble, allowed in actions for trespass.....		473
treble, allowed in actions for forcible entry.....		475
measure of, in certain cases.....		475
plaintiff may recover, in certain case, for withholding property...		478
when, set off by improvements.....		479
purchaser of property under execution may sue tenant for.....		484
for usurpation of office.....		539
when, given in action for mandate.....		748
may be added to costs on appeal for delay.....		660
in action for, to real property, entry allowed to survey.....		480
See ACTIONS; JUDGMENTS, ETC.		
DAYS, JUDICIAL—		
when Courts, etc., may be held.....		45
on what, may not be held.....		46
if that, appointed is not, next is.....		47
DEATH—		
of attorney, proceedings on.....		124
of person before period of limitation expires.....		171
father or mother may maintain action for, of child.....		191
guardian may maintain action for, of ward.....		191
representatives may sue for, of person caused by negligence.....		192
action not to abate by, of party.....		200
not to prejudice set-off.....		240
judgment on verdict after.....		423
execution may issue after, of judgment debtor.....		435
of party, not to bar counter claim.....		240
of attorney, effect on client.....		124
right of possession not affected by, etc.....		152
does not invalidate judgment in partition.....		501
judgment may be rendered on, after verdict.....		423
who entitled to sue for injury causing.....		191
heirs, etc., of one wrongfully killed by another, may sue.....		192
exemplary damages for wrongful.....		192

<b>DEBTOR—</b>	<b>Section.</b>
of defendant to be garnished.....	324
liability of, after garnishment.....	325
of judgment debtor may pay creditor.....	462
of judgment debtor examined.....	463
proceedings against judgment, how conducted.....	464
of debtor may pay debt of, by order of Judge.....	465
proceedings against, garnished.....	466
See CREDITOR; DEBTS.	
<b>DEBTS—</b>	
how attached, with credits.....	323
how levied on under execution.....	437
may be paid to sheriff and discharged, when.....	328
how attached.....	323
in attachment, notice to be given to party holding credits or owing debts.....	323
can be levied upon, when.....	328
Sheriff's receipt sufficient to discharge.....	328
ib.....	462
may be levied upon.....	437
See DEBTOR ; CREDITOR.	
<b>DECISIONS—</b>	
to be written and filed by Court.....	390
facts and conclusions in, how stated.....	391
exceptions to, taken how.....	402
when excepted to, of cause.....	403
when may be reviewed on appeal.....	659
of motion to modify, award is final.....	883
what stated in.....	391
exceptions to, how stated.....	404
when may be vacated.....	411
rule of, in mining claims.....	486
<b>DECLARATIONS—</b>	
of intention by proposed sole trader.....	886, 887
<b>DEFAULT—</b>	
on failure to answer amended complaint.....	234
what relief to be granted in judgment by.....	353
judgment by, when entered.....	356
judgment by, against non-resident.....	356
in mandate, not granted.....	741
See JUDGMENT.	
<b>DEFECT—</b>	
of parties, ground of demurrer.....	232
when account contains, Court may order further.....	251
in pleadings, Court must disregard.....	269
See PLEADINGS.	
<b>DEFENDANT—</b>	
is the adverse party.....	139

DEFENDANT— ( <i>Continued</i> ).	Section.
limitation when cause of action accrues against absent. ....	169
who may be made parties. ....	185
ib. ....	199
several may be joined as. ....	197
defense by one or more. ....	197
landlord may be made, in action for property in possession of tenant	194
action where tried, when he is a non-resident. ....	208
how may waive summons. ....	215
summons must be directed to. ....	216
summons must direct, to appear and answer, when. ....	216
summons, how served on. ....	219
ib. ....	220
service on, when made by publication. ....	221
when the action is against several. ....	223
voluntary appearance of, to service of summons. ....	225
pleadings of. ....	228
when may demur. ....	232
may demur and answer at same time. ....	233
may demur to whole or part of complaint. ....	233
when must answer amended complaint. ....	234
when deemed to have waived objections to complaint. ....	236
answer of, what to contain. ....	237
may set forth several defenses, separately stated. ....	241
may answer part and demur to part of complaint. ....	241
when not personally served may answer in six months. ....	267
proceedings when plaintiff ignorant of name of. ....	268
can be arrested, when. ....	271
to be discharged on giving bail or deposit. ....	278
how may give bail. ....	279
bail may surrender. ....	280
ib. ....	281
imprisonment exonerates bail. ....	283
discharge of, exonerates bail. ....	283
on arrest may give deposit instead of bail. ....	289
liability of Sheriff for escape of, arrested. ....	293
may apply to set aside order of arrest. ....	295
to be served with certain papers in replevin. ....	300
may except to sureties in replevin. ....	301
effect of such exception. ....	301
may claim redelivery of property. ....	302
justification of sureties of, in replevin. ....	303
may be restrained after answer to injunction filed. ....	312
may be heard before injunction issues. ....	314
may move to dissolve injunction. ....	316
what requisite to support such motion. ....	316
property of, may be attached. ....	318
property of, how attached. ....	323

<b>DEFENDANT—</b> <i>(Continued)</i> .	<b>Section.</b>
may have residue of attached property redelivered.....	332
may in attachment have judgment.....	334
when may move to discharge attachment.....	335
ib .....	337
what property of, may be attached.....	322
judgment in an action against several.....	352
may have non-suit entered.....	354
judgment against, in default.....	356
may bring issue to trial.....	363
may take a dismissal.....	363
may challenge jurors.....	367
allowed four peremptory challenges.....	367
when to open defense.....	371
order of defense where there are several.....	371
may waive jury trial.....	389
may object to referee.....	397
may move for new trial.....	411
may bring cause before Court for argument.....	419
may have judgment, when.....	420
if, disclaim ownership in certain actions plaintiff not to recover costs.....	477
<b>DEFENSES—</b>	
assignment of thing in action not to prejudice.....	183
when new matter constitutes a.....	237
defendant may set forth compensation as.....	240
plaintiff may demur to sufficiency of.....	243
on written instrument, when deemed genuine and executed.....	247
may state what in libel and slander.....	258
when defendant to open his.....	371
order of, where there are several.....	371
several may be set up in answer.....	241
<b>DEFINITIONS—</b>	
of terms used in this Code.....	13
Courts take notice of.....	896
See CONSTRUCTION.	
<b>DELIBERATION—</b>	
of jury, how conducted.....	377
may return after retiring for.....	378
<b>DELIVERY—</b>	
of personal property, plaintiff may claim.....	297
of property purchased at execution sale, how made.....	448
ib.....	449
of certificate, when given.....	448
ib.....	449
of certificate, when sufficient to pass the property.....	449
<b>DEMAND—</b>	
of bill of items, when and how.....	251
of possession in forcible entry and detainer actions.....	797

<b>DEMURRER—</b>	<b>Section.</b>
of attorney to accusation.....	133
of attorney to accusation, if overruled, must answer.....	134
waives summons.....	215
is part of pleadings.....	228
to the complaint, when put in.....	232
causes of, to complaint.....	232
must specify what.....	233
may be taken to the whole or part of complaint.....	233
defendant may demur and answer at the same time.....	233
to answer and defenses, by plaintiff.....	243
after or before, either party may amend pleadings.....	266
when not waived.....	266
if, to complaint overruled, Court may allow answer filed.....	266
if, to answer overruled, facts alleged deemed denied.....	266
issue of law raised by.....	358
adverse party deemed to except to ruling of Court on.....	403
to answer, in mandate.....	744
in Justice's and Probate Courts.....	565
proceedings on, in Justice of the Peace and Probate Courts.....	569
to amended pleadings.....	234
ib.....	571
See PLEADINGS; COMPLAINT; ANSWER.	
<b>DENIAL—</b>	
of accusation by attorney.....	132
ib.....	133
of the complaint, specific and general.....	237
must be verified, or written instruments deemed genuine.....	246
of claim to property in action by defendant, plaintiff not to recover costs.....	477
failure to make, effect.....	259
See ANSWER.	
<b>DEPOSIT—</b>	
defendant may be discharged on giving.....	278
ib.....	289
to be paid into Court by Sheriff.....	290
may be withdrawn on giving bail.....	291
how disposed of after judgment.....	292
when to be paid in Court.....	347
disposal of such.....	348
manner of enforcing order for, in Court.....	349
of surplus, in Court on foreclosure sale.....	469
on substituting other defendant.....	201
on appeal, Sec. 644 to.....	652
on appeal, when waived.....	651
for costs in Justices' and Probate Court, when.....	634
of fees in trial, right of property.....	438
of summons in Post Office.....	222, 224

<b>DEPOSIT.—</b> <i>(Continued).</i>	Section.
for service by mail.....	687
money on, no limitation for action on.....	163
<b>DEPOSITION—</b>	
may be taken when cause continued.....	365
term defined, depose.....	13
of witness out of Territory.....	961
of witness in the Territory.....	962
of witness, how taken.....	963
commission to issue.....	963
interrogatories to be prepared.....	964
duties of Commissioners.....	965
non-return of commission, trial continued.....	966
by whom used.....	967
in the Territory, before whom taken.....	968
how taken, and by whom used.....	969
when may be excluded.....	970
once taken, may be read, when.....	971
to be used out of this Territory.....	972
how procured upon commission.....	973
how procured, if no commission.....	974
when taken without commission.....	974
testimony, how taken.....	975
See EVIDENCE.	
<b>DESCENT—</b>	
caste, right of possession not affected by.....	152
<b>DESCRIPTION—</b>	
of property in complaint.....	252
of property in order for survey.....	481
<b>DISBURSEMENTS—</b>	
when allowed in actions.....	692
bill of, by whom verified.....	703
See Costs.	
<b>DISCHARGE—</b>	
of defendant, on bail or deposit.....	278
of defendant, exonerates bail.....	283
of juror for sickness.....	379
in civil actions.....	783
for failure to furnish support.....	794
application for.....	784
service of notice.....	785
examination of prisoner.....	786
interrogatories in writing.....	787
oath administered.....	788
order of discharge.....	789
successive applications for.....	790
when final.....	791
judgment may be enforced against estate.....	792
prisoner not subject to rearrest after.....	793

DISABILITY—	Section.
certain, of parties excluded from time to commence actions.....	170
must exist when right accrues.....	175
of party insufficient to cause abatement.....	200
of Justice, proceedings under.....	633
DISCONTINUANCE—See DISMISSAL.	
DISCLAIMER—	
in actions to quiet title.....	477
DISCOVERY—	
of new evidence ground for new trial.....	411
DISCRETION—	
abuse of, ground for new trial.....	411
of Court, in allowance of costs.....	696
costs on appeal, when in.....	698
costs on postponement, are in.....	700
costs on condemnation of land in.....	868
in granting stay, under writ of review.....	731
ordering issues in mandate to be tried by jury in.....	743
in allowing jury to view premises.....	374
as to form of oath.....	994
DISMISSAL—	
of action, on failure to secure costs.....	707
may be had by either party, when.....	363
when, of action to be had.....	354
of appeal, failure to produce papers, etc.....	657
of appeal, effect of.....	658
DISOBEDIENCE—	
to order of court to make deposit.....	349
of referee in supplemental proceedings.....	467
See CONTEMPTS.	
DISTRICT COURTS—	
jurisdiction.....	26
duration of terms.....	27
adjournment of the.....	28
judgment may be entered in vacation.....	29
judges of, may hold court in another district.....	57
powers of judges of, at chambers.....	58
attorneys admitted to.....	114
transfer of causes from one to another.....	217
may appoint receivers, when.....	342
to have seal.....	53
liens in.....	823
eminent domain, Sec. 856 to.....	860
DIVORCE—	
sittings of Court for, may be private.....	41
DOCKET—	
of judgment, by Clerk.....	425
what constitutes.....	426



<b>DOCKET—</b> <i>(Continued)</i> .	Section.
how entries in, made.....	426
open for public inspection.....	427
transcript filed in other counties.....	428
satisfaction to be entered in.....	429
of Justice, pleadings in.....	562
of Justice, to contain.....	622
of Justice, as evidence.....	623
index to, kept by Justice.....	624
of Justice, delivered to successor.....	625
proceedings, on office becoming vacant.....	626
execution may issue on, when.....	627
transcript of, of foreign Justice, evidence.....	917
transcript, how authenticated.....	918
copy of, to be produced by redemptioner.....	455
<b>DUPLICATE—</b>	
certificate of sale by execution to be filed with Recorder.....	450
<b>EJECTMENT—</b>	
action, how affected by alienation.....	485
costs in actions of.....	693
what claim may be joined in action of.....	231
findings in action of, by jury.....	385
<b>ELECTION, CONTESTING—</b>	
proceedings in, Sec. 758 to.....	775
<b>EMBEZZLEMENT—</b>	
of money, etc., ground for arrest.....	271
<b>EMINENT DOMAIN—</b>	
purposes for which it may be exercised.....	851
what estates in land may be acquired by condemnation.....	852
private property defined.....	853
classes enumerated.....	853
facts necessary to be found before condemnation.....	854
parties may make location.....	855
may enter to make surveys.....	855
jurisdiction in District Court.....	856
the complaint and its contents.....	857
summons, what to contain.....	858
how issued and served.....	858
who may defend.....	859
what the answer may show.....	859
Court shall have jurisdiction to regulate.....	860
the mode of making crossings or of enjoying a common use.....	860
Court or jury to assess damages.....	861
the date with respect to which compensation shall be assessed....	862
the measure thereof.....	862
new proceedings to cure defective title.....	863
payment of damages.....	864

<b>EMINENT DOMAIN—</b> <i>(Continued).</i>	<b>Section.</b>
damages, to whom paid .....	865
final order of condemnation, what to contain .....	866
when filed, title vests .....	866
putting plaintiff in possession .....	867
costs may be allowed; distribution thereof .....	868
rules of practice .....	869
exceptions .....	870
<b>ENTRY—</b>	
of order or judgment of District Court in vacation .....	29
on real estate, when deemed valid .....	145
on real estate, damages for unlawful .....	475
<b>ERRORS—</b>	
immaterial, disregarded, when .....	269
of law, when ground for new trial .....	411
<b>ESTATE—</b>	
for life or years, in partition .....	505
<b>EVIDENCE—</b>	
judicial notice, of what facts Court will take .....	896
will to be in writing .....	934
contents of writing, how proved .....	932
transfer of real property, evidence required .....	935
ib .....	936
agreement not in writing, when invalid .....	937
representation as to credit of third party .....	939
knowledge of the Court .....	896
agreement not in writing, when valid .....	938
perjury and treason, evidence required to prove .....	933
<b>PRODUCTION—</b>	
one producing to explain altered writing .....	940
See DEPOSITION.	
<i>Miscellaneous.</i>	
of offer, what equivalent to tender .....	983
on payment receipt to be given .....	984
proceedings to perpetuate testimony, Sec. 985 to .....	991
administration of oaths and affirmations .....	42
ib .....	64
administration of oaths and affirmations, how .....	993
<b>EXAMINATION—</b>	
proceedings in, of debtor of judgment debtor .....	463
trial, how conducted .....	464
of judgment debtor, as to property .....	460
<b>OF WITNESS:</b>	
when excluded .....	976
<b>EXCEPTIONS—</b>	
may be taken, when .....	402
what, considered excepted to .....	403
form of .....	404

**EXCEPTIONS—***(Continued).***Section.**

taken on notice to adverse party.....	406
taken after judgment.....	407
taken on refusal of Court to allow .....	408
how settled, where Judge ceases to hold office .....	409
taken to report of referee.....	401
bill of, when necessary on motion for new trial.....	412
bill of, in judgment roll.....	424
to undertakings, how taken.....	651
to sureties in replevin, when taken.....	301
to referees.....	397
ib.....	398
either party may take.....	402
to be signed by the Judge and filed with Clerk.....	405
not presented at time of ruling.....	406
after judgment, how settled.....	407
if refused, what proceedings may be taken.....	408
what proceedings to be had if Judge's term expires before settling.....	409
application for new trial, when to be made on.....	412
statement to constitute bill of.....	415

**EXECUTION—**

of writ of attachment, how made.....	323
may issue within five years.....	430
how to issue, to whom, and form of.....	431
when made returnable.....	432
to enforce judgment.....	433
after five years.....	434
when and how may issue after death of judgment debtor.....	435
may issue to Sheriff of any county.....	436
what property liable to.....	437
how debts and credits to be subject to.....	437
not to affect property until levy.....	437
claim by third person under.....	438
such claim, how determined.....	438
what exempt from.....	439, 440
writ of, how executed.....	441
notice of sale under.....	442
selling property under, without notice.....	443
sale under, how effected.....	444
against delinquent bidder.....	445
officer not liable in certain cases.....	447
delivery, by officer, of property purchased under.....	448
ib .....	449
real property—certificate.....	450
real property, how redeemed from.....	451
who may redeem property sold under.....	451
when sale under, becomes absolute.....	453
waste may be restrained till execution of conveyance under.....	456

EXECUTION—(Continued).	Section.
against property of joint debtors, undue proportion.....	459
for deficit after foreclosure.....	468
damages for injury to property sold under, to be recovered.....	484
EXECUTORS—	
when, may sue without joining party interested.....	184
when, may sue for death of person.....	192
EXEMPT—	
from execution, property enumerated.....	439, 440
from jury duty, who are.....	81
See EXECUTION, JUROR.	
EXONERATION—	
of bail by death.....	283
of bail by re-arrest.....	280
of bail by surrender of defendant.....	281
of Sheriff by giving bail.....	293
See ARREST.	
EX PARTE—	
ruling, when is excepted to.....	403
applications. See INJUNCTION; MANDATE.	
EXPERTS—	
unwritten law of State, proved by.....	908
See EVIDENCE; WITNESS.	
EXPRESS TRUST—	
trustee of, who is.....	184
trustee of, may sue alone.....	184
FACTS—	
to be stated in complaint.....	230
not sufficient, in complaint ground for demur.....	232
objection to want of sufficient, not waived.....	236
trial of question of, not in pleadings.....	140
issue of, how arises.....	359
issue of, how tried.....	361
separate finding of, on decision.....	391
findings of, how waived.....	392
FARMER—	
what property of, exempt from execution.....	440
FATHER—	
may sue for seduction of whom.....	190
may sue for death or injury to whom.....	191
FEEES—	
Sheriff to deduct his, on attachmeat, when.....	332
tender of, to witnesses.....	943
of attorney, how regulated.....	692
of referees.....	699
of recording mechanics' liens.....	822
See COSTS.	
FEMALE—	
unmarried, may prosecute for her own seduction.....	189

<b>FICTITIOUS NAME—</b>	<b>Section.</b>
party may be sued by, when.....	268
ignorance of real name to be stated, how.....	268
<b>FINDINGS—</b>	
when referees to report.....	399
effect of, of referees.....	400
of referee excepted to.....	401
of fact, when waived.....	392
must be in writing, and filed.....	391
when fact and conclusions to be separately stated.....	391
verdict on counter claim.....	386
verdict on claim and delivery.....	387
verdict, general and special, defined.....	384
verdict, when general or special, given.....	385
<b>FINES—</b>	
on juror for failure to appear.....	104
imposed on usurper of office.....	541
for neglect to obey mandate.....	750
for contempts.....	839
See FORFEITURE.	
<b>FIRE ENGINES—</b>	
exempt from sale on execution.....	440
<b>FORCIBLE ENTRY AND DETAINER—</b>	
what Court has jurisdiction in actions for.....799, 800,	801
judgment for treble damages, when allowed.....	475
forcible entry defined.....	795
forcible detainer defined.....	796
unlawful detainer defined.....	797
notices, how served in.....	798
parties defendant in actions for.....	802
parties generally.....	803
complaint in actions for.....	804
arrest, order for, when made.....	805
judgment by default may be entered.....	806
defendant may appear and answer or demur.....	807
trial by jury.....	808
showing required of plaintiff.....	809
what defendant may show.....	809
complaint must be amended.....	810
verdict and judgment.....	811
verification of complaint and answer.....	812
appeal does not stay proceedings unless so directed.....	813
practice and proceedings in.....	814
appeals, how taken.....	814
<b>FORECLOSURE—</b>	
where actions for, to be tried.....	205
proceedings in.....	468
what done with surplus after sale.....	469

<b>FORECLOSURE—</b> <i>(Continued)</i> .	Section.
when not all due, proceedings in.....	470
when receiver may be appointed in.....	341
exclusive remedy by.....	482
<b>FORFEITURE—</b>	
limitation of action for.....	159
where trial in action for.....	206
liability of Sheriff to.....	447
<b>FRANCHISE—</b>	
actions for usurpation of, Sec. 584 to.....	542
See USURPATION.	
<b>FRAUD—</b>	
ground for arrest.....	271
See EVIDENCE.	
<b>FURNITURE—</b>	
what exempt from execution.....	440
<b>FUTURE—</b>	
included in the present.....	13
<b>FUNDS—</b>	
investment of, in hands of receiver.....	346
<b>GARNISHEE—</b>	
required to answer.....	326
to furnish memorandum.....	327
is liable to plaintiff.....	325
when served with notice of attachment.....	324
property, how attached.....	323
See ATTACHMENT.	
<b>GOLD COIN—</b>	
judgment.....	421
<b>GOVERNOR—</b>	
to appoint Judge to act for another.....	57
<b>GRAND JURY—</b>	
duty to inquire into public offenses.....	75
to be impaneled.....	105
how constituted.....	106
panel, how filled.....	106
proceedings regulated by Criminal P. A. ....	107
<b>GROWING TIMBER—</b>	
action for cutting.....	473
<b>GUARDIAN—</b>	
general, to appear for infant.....	187
ad litem of infant, in actions.....	187
when and by whom appointed.....	188
appointed in Justices' and Probate Courts.....	554
<b>HABEAS CORPUS—</b>	
jurisdiction of Supreme Court to issue writ.....	20
District Court to issue .....	26

<b>HANDWRITING—</b>	Section.
entries of decedents, when evidence.....	929
<b>HIGHWAY—</b>	
damages for trespass to.....	473
taking timber to repair damages for.....	474
<b>HUSBAND—</b>	
of sole trader.....	895
not to be witness against wife.....	899
when joined with wife as party.....	185
<b>IMMATERIAL—</b>	
errors to be disregarded.....	269
<b>IMPRISONMENT—</b>	
effect of, on Statute of Limitation.....	170
of judgment debtor, when.....	461
when, for contempt of Court.....	840
when, for disobedience of mandate.....	750
See DISCHARGE.	
<b>IMPROVEMENTS—</b>	
when allowed as set-off.....	479
value of, in eminent domain.....	861
when not assessed in condemning land.....	862
<b>INADVERTENCE—</b>	
relieved by amendment .....	267
<b>INDORSEMENT—</b>	
of Clerk on complaint.....	215
on bail bond.....	288
on affidavit in replevin .....	299
of Sheriff's return to writ of attachment .....	340
<b>INFANT—</b>	
appearance of, by guardian.....	187
effect of being an, on limitation of actions.....	170
summons against, how served on.....	220
share, when to be paid to guardian.....	528
on partition, securities may be given to guardian .....	512
<b>INJUNCTION—</b>	
when action stayed by, Statute of Limitation not to run.....	174
what is and who may grant.....	309
when may be granted .....	310
at what time, may be granted.....	311
what required to obtain .....	311
after answer, on notice.....	312
security upon.....	313
order to show cause.....	314
to suspend business of corporation, how and by whom granted...	315
motion to vacate or modify .....	316
when will be vacated.....	317
during foreclosure.....	483
after execution.....	483



INJURY—	Section.
claims for, united.....	231
actions for, where tried.....	208
on entry for survey of land .....	481
after sale on execution .....	484
to child, father may sue for.....	191
so may guardian of.....	191
to real property, action for, where tried.....	205
to character, etc., united .....	231
INQUEST—	
jury of, defined.....	78
jurors of, how summoned.....	103
impaneling jury of.....	112
INSANE PERSONS—	
guardians to recover what, in partition.....	529
may consent to partition and release, how.....	530
service of summons on.....	220
is not a witness.....	898
INSANITY—	
as a limitation of actions.....	170
person laboring under, how summoned.....	220
INSPECTION—	
of writings, effect of refusal of.....	248
when may be demanded.....	679
citizens entitled to inspect and copy what writings.....	902
party inspecting not bound to offer in evidence.....	925
docket of judgment to be always open for.....	427
INSTRUCTIONS TO JURY—	
what to state.....	372
be furnished on request.....	372
on findings of fact.....	385
on their return for further.....	378
special, how given.....	373
INSTRUMENTS—	
occupation under, when adverse.....	147
what is adverse possession under.....	148
when genuineness is admitted.....	246
See WRITINGS.	
INSUFFICIENCY—	
of pleading when ground for demurrer.....	232
of evidence on motion for new trial.....	411
of the verdict.....	404
INSURRECTION—	
authorizes change of place of holding Court.....	50
INTEREST—	
and costs as part of judgment.....	705
rebate of.....	470
INTERPLEADER—	
may be substituted for defendant.....	201
proceedings for substitution.....	201

<b>INTERPRETER—</b>	Section.
when may be sworn.....	901
<b>INTERROGATORIES—</b>	
to be annexed to commission to take testimony.....	964
See EVIDENCE.	
<b>INTERVENTION—</b>	
takes place, when.....	202
by parties brought in.....	202
<b>INVENTORY—</b>	
of property attached, how made.....	327
<b>INVESTMENT—</b>	
of funds by receivers.....	346
<b>IRREGULARITY—</b>	
when ground for new trial.....	411
effect of, in judicial sale.....	458
in attachment, ground for discharge.....	339
<b>IRRELEVANT MATTER—</b>	
to be stricken out.....	250
<b>ISSUES—</b>	
special, how tried.....	140
judgment on, of law proceedings.....	393
definition, kinds of.....	357
of law, how raised.....	358
of fact, how raised.....	359
of law, how tried.....	360
of fact, how tried.....	361
what, to be first disposed of.....	361
how to be placed on calendar.....	362
who may bring, to trial.....	363
trial of, postponed.....	364
consent to defeat postponement.....	364
in partition.....	494
in mandate, how tried.....	743
after judgment against joint debtors.....	677
in forcible entry and detainer.....	808
<b>IN JUSTICES' COURTS—</b>	
defined.....	590
of law, how raised.....	591
of fact, how raised.....	592
of law, how tried.....	593
of fact, how tried.....	594
trial of fact by jury, how waived.....	389
how waived in Justices' Courts.....	595
trial of issues by referees.....	394
See TRIAL.	
<b>ITEMS OF ACCOUNT—</b>	
not to be set out in pleadings, when.....	251

## JOINDER—

Section.

executor need not join with <i>cestui que trust</i> .....	184
husband to be joined with wife, when.....	185
who may be joined as parties plaintiff.....	193
who may be joined as defendants.....	194
all interested to be joined, when.....	195
persons claiming interest unite in.....	196
those united in interest, either plaintiff or defendant.....	197
of all liable on same instrument.....	198
of tenants in common, etc.....	199
of causes of action.....	231

See PARTIES ; ACTIONS.

## JOINT DEBTORS—

those not summoned in action, may be after judgment.....	672
summons, what, and how served.....	673
affidavit to go with summons.....	674
answer filed, what to contain.....	675
pleadings, what are the.....	676
issues in proceedings, how tried.....	677
character of the verdict.....	677
judgment, where some defendants only are served.....	223
execution on judgment against.....	431
one party paying more than his share of judgment.....	459

## JUDGES—

of Supreme Court, number requisite to transact.....	23
of Supreme Court, number requisite to pronounce judgment.....	24
when absent from Court, Sheriff to adjourn.....	48
may, in certain cases, change place of holding Court.....	50
may order rooms, etc., for holding Courts.....	52
places of residence of.....	56
District, may hold Court in other district.....	57
power of, at chambers.....	58
ib.....	58
when disqualified.....	59
not to act as attorney in his own Court.....	60
certain, not to act as attorneys.....	61
not to have a partner.....	62
general power of, out of Court.....	63
power as to conduct of proceedings before them.....	64
ib.....	65
ib.....	66
proceedings not to be affected by vacancy in office of.....	69
jury to be drawn on order of.....	89
of County, to be present at drawing of jury.....	91
may change place of trial when disqualified.....	210
may order further items of account.....	251
may issue order of arrest.....	272
may appoint receivers.....	341

**JUDGES—***(Continued).*

## Section.

exceptions may be taken to rulings of.....	402
exceptions to be signed by.....	405
exceptions not presented at time of ruling, how settled by.....	406
exceptions after judgment, how settled by.....	407
proceeding if he refuses exceptions, or term expires before settlement .....	408
may require judgment debtor to appear and answer.....	460
may order arrest of judgment debtor.....	461
may order property of judgment debtor in other hands to be applied.....	465
may grant order to survey land in litigation.....	480
to settle receptions, though ceased to be.....	409
may be a witness in his own Court.....	900

See COURTS.

**JUDGMENT—**

against whom, may be given.....	351
against one of several debtors, costs may be severed.....	697
against one, action as to others.....	352
against married woman in forcible entry.....	802
against Sheriff, conclusive on sureties.....	720
on award, effect of.....	880
for costs allowed to plaintiff.....	693
for costs allowed to defendant.....	695
for costs allowed to one of several defendants.....	697
costs included in.....	705
for costs on appeal, in discretion.....	698
District Courts may enter.....	29
effect of, on discharged prisoner.....	992
for contempt.....	843
may be appealed from.....	642
how, to be enforced after five years.....	434
how, to be pleaded.....	253
how, to be reviewed.....	639
ib.....	640
interest and costs included in.....	705
memorandum of costs for.....	703
for costs, when modified on appeal.....	698
directing dismissal and nonsuit.....	354
directing dismissal against non-resident.....	707
in Justices' and Probate Courts, how appealed from.....	665
on appeal from inferior Court, appealed from.....	642
on failure to answer.....	356
by confession, how entered.....	778
by submission of controversy.....	781
on merits.....	855
referee's report in partition.....	501
on review.....	734

JUDGMENT—(*Continued*).

## Section.

on review, what is.....	736
on appeal is part of judgment roll.....	661
remittitur to be certified by Clerk.....	661
in foreclosure, on eviction of purchaser.....	458
satisfaction of, attachment.....	331
in actions for usurpation.....	537
when restitution to be made.....	660
when plaintiff's right terminates during action.....	478
Clerk to enter in docket.....	425
docket of, to contain what.....	426
to be open for inspection.....	427
transcript filed in another county.....	428
how satisfied, entry of.....	429
execution on, when to issue.....	430
to be enforced by execution.....	433
to be served by certified copy, when.....	433
execution on, after death of party.....	435
summary against delinquent bidder.....445,	446
may be revived.....	458
of foreclosure of mortgage.....	468
in actions for nuisance.....	471
in actions for waste.....	472
of Supreme Court to be remitted to Court below.....	22
of Supreme Court, number of Judges to pronounce.....	24
of District Court may be entered in vacation.....	29
of Probate Court, presumptions, etc., in favor of.....	32
on conviction of attorney of accusation.....	137
possession by virtue of, when deemed adverse.....	147
what constitutes adverse possession under.....	148
proceedings after, on cases transmitted.....	213
on transferred case, to be recorded in Court where action first com- menced.....	213
parties may be relieved from, in certain cases.....	267
not to be reversed for immaterial error in pleading.....	269
defendant may be arrested at any time before.....	275
deposit, how disposed of after.....	292
against Sheriff, proceedings on.....	294
how satisfied in attachment suit.....	331
what is.....	350
how to be entered where there are several parties.....	351
ib.....	352
what relief to grant.....	353
of nonsuit, when to be entered.....	354
when to be on merits.....	355
may be given by default, when.....	356
to be entered on decision of Court.....	391
exceptions may be taken before or after.....	402

<b>JUDGMENT—(Continued.)</b>	<b>Section.</b>
exceptions after judgment.....	407
when to be entered.....	418
may be for defendant for excess of set-off.....	420
in replevin, in gold coin, etc.....	421
book to be kept by Clerk.....	422
not to be a lien in case of death.....	423
roll, what to constitute.....	424
lien, when begins and expires.....	425
conclusive in foreclosure.....	468
disregard of, constitutes contempt.....	830
<b>IN CERTAIN CASES—</b>	
replevin, an alternative.....	421
general, what is.....	350
special proceedings.....	725
actions to quiet title.....	478
forcible entry and detainer, by default.....	806
forcible entry, on verdict.....	811
foreclosure.....	468
actions for usurpation of office.....	537
usurpation, fine may be imposed.....	541
partition suits.....	494
partition, effect of.....	502
partition, how enforced.....	433
election contests.....	769
mandate, to be granted.....	748
actions for enforcement of liens.....	824
liens, what to include.....	825
liens, rank of liens.....	826
liens, docketed for deficiency.....	826
proceedings to declare wife sole trader.....	891
contempts, fine imposed.....	839
<b>JUDGMENT IN PROBATE AND JUSTICE'S COURTS—</b>	
on confession.....	600
of dismissal.....	601
on verdict.....	602
on demurrer.....	603
abstract of.....	608
abstract filed and docketed.....	609
costs, allowed.....	607
docket of, effect.....	610
docket not a lien unless, what.....	611
excess of, remitted to save jurisdiction.....	605
after a trial.....	603
on offer to compromise.....	606
defendant subject to arrest.....	604
<b>JUDGMENT BOOK—</b>	
to be kept by Clerk.....	422
confession of judgment entered in.....	778

<b>JUDGMENT CREDITOR—</b>	<b>Section.</b>
if purchaser is evicted, liable.....	458
may have order to examine his debtor.....	460
may have order to arrest his debtor.....	461
judgment may be paid by debtor of debtor.....	462
may sue corporation, when.....	466
<b>JUDGMENT DEBTOR—</b>	
execution to issue against.....	431
execution after death.....	435
what property exempt from execution.....	439, 440
to indicate property to levy on.....	441
to direct order of sale.....	444
to redeem property sold, when.....	452
to whom payments made.....	454
supplementary proceedings.....	460
to be imprisoned, when.....	461
debtor of, to pay creditor's claim.....	462
to be punished for contempt.....	467
earnings of, exempt from execution.....	439, 440
<b>JUDGMENT ROLL—</b>	
what constitutes.....	424
to contain what.....	661
what constitutes, for dissolution of corporation.....	850
<b>JUDICIAL DAYS—</b>	
enumerated.....	45
what are non-judicial days.....	46
See ADJOURNMENT.	
<b>JUDICIAL NOTICE—</b>	
of what facts Court will take.....	896
<b>JUDICIAL OFFICERS—</b>	
to take acknowledgments and affidavits.....	66
to take depositions in this Territory.....	962
are exempt from jury duty.....	81
the incidental powers and duties of.....	63
the powers of, out of Court.....	63
powers of, enumerated.....	64
to punish for contempt.....	65
what acts are contempt.....	870
may enforce exercise of jurisdiction.....	72
<b>JUDICIAL POWERS—</b>	
special investment of.....	73
<b>JUDICIAL RECORD—</b>	
defined.....	910
authenticated, as evidence.....	911
foreign, how authenticated.....	912
oral evidence of foreign.....	913
Justices' judgment of sister State, how proved.....	917
See EVIDENCE.	



**JURISDICTION—**

	Section.
of Supreme Court .....	19
original, of Supreme Court .....	20
appellate, of Supreme Court.....	21
of District Courts.....	26
of Probate Courts.....	31
civil, of Justices' Courts.....	36
civil, of Justices' Courts, restricted .....	37
civil, of Justices' Courts, territorial extent of.....	38
criminal, of Justices' Courts .....	39
of Court to which cause is transferred.....	212
of Court, acquired by service of summons, etc.....	225
want of, in Court, ground for demurrer .....	232
objections to, never deemed waived.....	236
in pleading judgment, not necessary to state facts constituting...	253
by voluntary appearance .....	225
of judicial officers.....	66
territorial, of Justices of Peace.....	38
in taking acknowledgments and affidavits.....	66
of Justices in petty larceny and assault and battery .....	39
of confession of judgment.....	776
of breaches of the peace .....	39
of change of names.....	871
of condemnation of land.....	856
all means to carry into effect.....	72
want of, ground for demurrer.....	232
when acquired.....	225

**JURORS—**

qualifications of.....	79
disqualification of.....	80
may be witnesses.....	900
persons exempt from service.....	81
discharge for sickness.....	379
affidavit to impeach verdict.....	411
persons may be excused.....	82
excused on affidavit.....	83
list of persons to serve as.....	84
selection of.....	85
list to be placed with Clerk.....	86
duty of Clerk receiving list.....	87
how long regular jurors to serve.....	88
to be drawn by order of Judge.....	89
what number to be drawn.....	89
Judge and Sheriff to be notified of drawing.....	90
who to witness drawing.....	91
drawing to be adjourned.....	92
drawing, when to be had.....	93
how the drawings conducted.....	94

<b>JURORS—</b> ( <i>Continued</i> ).	Section.
disposition to be made of ballots.....	95
copy of list furnished to any one.....	96
Sheriff summons.....	97
Court may order drawing.....	98
when complete from bystanders.....	99
jurors for Justices' and Probate Courts.....	100
how summoned.....	101
return of officer.....	102
for inquest, how summoned.....	103
obedience of, how enforced.....	104
<b>JURIES—</b>	
defined.....	73
various kinds of.....	74
for trials.....	74
grand.....	75
to consist of what number.....	77
of inquest, how summoned.....	78
when Grand, to be impaneled.....	105
Grand, how constituted.....	106
how to be impaneled.....	107
impaneling trial, Clerk to call list.....	108
manner of impaneling trial.....	109
how drawn.....	366
four peremptory challenges allowed.....	367
grounds of challenge.....	368
challenge for cause, how tried.....	369
to be sworn, form of oath.....	370
for the trial of right of property, how summoned.....	438
how and when waived.....	389
when waived in Justices' and Probate Courts.....	595
to try facts not in issue, when.....	140
to be conducted to view property.....	374
to take certain papers on withdrawing.....	376
the verdict of.....	384
may correct informal verdict.....	383
to be drawn on order of Judge.....	89
Sheriff and Judge to be notified.....	90
who to witness drawing.....	91
in the exercise of eminent domain.....	861
must ascertain and assess what.....	861
<b>JUSTICES' AND PROBATE COURTS—</b>	
Justice of the Peace must hold.....	35
civil jurisdiction of.....	36, 801
civil jurisdiction of, restricted.....	37
territorial jurisdiction of.....	38
criminal jurisdiction of.....	39
jurors for, by whom summoned.....	100

JUSTICES' AND PROBATE COURTS—(Continued).	Section.
manner of summoning jurors for.....	101
proceedings on forming jury in.....	110
jury for, how impaneled.....	111
transfer of cause from one to another, when.....	211
<b>ACTIONS—</b>	
how commenced in.....	550
civil, to be brought in defendant's precinct.....	548
when to be brought elsewhere.....	543
<b>ADJOURNMENT—</b>	
when necessary by amendment of pleadings.....	586
when jury is demanded.....	586
for want of material testimony.....	588
may have, by consent.....	587
undertaking on.....	588
on motion of defendant, when granted.....	588
<b>AFFIDAVITS—</b>	
for postponement after amendment allowed.....	570
for postponement of trial, absence of witness.....	588
denying execution of writing, in answer.....	599
in justification by sureties on appeal bond.....	669
for writ of attachment to contain what.....	319
for arrest of defendant.....	574
for writ of attachment.....	578
for recovery of personal property, Sec. 298 and.....	308
ib.....	582
for change of venue.....	544
to answer raising question of title to realty.....	549
to service of summons.....	560
<b>ALLEGATIONS—</b>	
statement of, in summons.....	555
no particular form of, required.....	562
what are required.....	564
of answer, what required.....	566
of counter claim, must be stated.....	567
of new matter in answer, demurred to.....	568
may be amended.....	570
what necessary for arrest of defendant.....	572, 573
for attachment, what necessary.....	578
for claim and delivery of personal property, what necessary.....	582
in motion for postponement what, necessary.....	588
material, controverted, raises issue of fact.....	592
against debtor et al., after execution.....	616
<b>AMENDMENTS—</b>	
of defective pleadings.....	570
of pleadings, when party entitled to costs on.....	570
<b>ANSWER—</b>	
may contain what.....	566
may, or demur to amended pleadings.....	571

JUSTICES' AND PROBATE COURTS (ANSWER)—(Continued).	Section.
without summons being served.....	552
if, contains new matter may be demurred to, when and how.....	568
no particular form required.....	562
may be oral or in writing.....	562
if, oral proceedings thereon.....	562
<b>APPEARANCE—</b>	
voluntary, waives objection to jurisdiction.....	543
of defendant, waives summons.....	552
by attorney or in person.....	553
time for, of defendant.....	556
hour for.....	561
judgment against defendant for non.....	583
non, of either, trial may proceed, how.....	596
<b>APPEALS—</b>	
stay of proceedings on.....	670
from judgment of.....	665
on questions of law alone statement to be filed.....	666
settlement of statement, etc.....	666
on questions of fact, or law and fact, no statement necessary.....	667
upon, must transmit the case.....	668
undertaking on, justification of sureties.....	669
<b>ARREST—</b>	
of defendant, when and in what cases.....572,	573
undertaking on.....	574
after, must be taken immediately before Court.....	575
plaintiff must be notified of.....	576
how discharged.....	577
defendant may give bail, when and how.....	588
judgment, when defendant subject to, must so state.....	604
for contempt, when.....	619
<b>ATTORNEY—</b>	
who may act as.....	553
who may not act as.....	553
<b>ATTACHMENT—</b>	
writ of, when to issue.....	578
undertaking on, required.....	579
writ of, to contain what.....	580
officer may take security, instead of serving.....	580
Secs. applicable.....	581
affidavit for writ of, to contain what.....	319
<b>BLANK—</b>	
not to be left in any paper except subpoenas.....	631
<b>CHALLENGE—</b>	
to jurors.....	597
for cause.....	597
cause of.....	368

<b>JUSTICES' AND PROBATE COURTS—</b> <i>(Continued).</i>	<b>Section.</b>
<b>CLAIMS—</b>	
for delivery of personal property.....	582
Secs. apply to.....	582
<b>COMMISSION—</b> See DEPOSITION.....	582
<b>COMPLAINT—</b>	
defined.....	564
not required to be in any particular form.....	562
must be in writing.....	562
to contain what.....	564
when allegations of, denied, issues arise.....	592
on note or written obligation.....	599
<b>COMPROMISE—</b>	
offer and acceptance of.....	606
<b>CONFESSION OF JUDGEMNT—</b>	
may be entered.....	600
<b>CONSTABLE—</b>	
cannot act as attorney, when.....	553
may arrest defendant, when.....	573
may serve summons.....	560
may summons jury.....	100
See SHERIFF.	
<b>CONTEMPT—</b>	
punishment for.....	617
proceedings for.....	618
ib.....	619
conviction of, must be entered in docket.....	621
may be punished by fine or imprisonment.....	620
<b>COSTS—</b>	
must be included in judgment.....	607
when not to be included in judgment.....	606
prevailing party entitled to.....	635
may demand security for.....	634
<b>COUNTER CLAIM—</b>	
may be set up in answer.....	566
effect of omission to set up.....	567
<b>DEBTORS—</b>	
examination of judgment.....	616
<b>DEFAULT—</b>	
judgment by.....	583
ib.....	584
<b>DEFENDANT—</b>	
summons to be directed to, to contain what.....	555
time for appearance of.....	556
if, omits to set up counter claim.....	567
may demur to complaint.....	565
order of, and arrest of, when and how made.....	572
affidavit and undertaking for order of arrest of.....	574

JUSTICES' AND PROBATE COURTS (DEFENDANT)—( <i>Continued</i> ).	Section.
must have immediate trial.....	575
plaintiff must be notified of arrest of.....	576
officer must detain the, under arrest, when.....	577
failure of, to appear at trial, proceedings thereon.....	583
judgment against, on demurrer.....	584
may give bail, when and how.....	588
when, under arrest, when and how discharged.....	577
offer of, to compromise, effect of.....	606
<b>DEMURRER—</b>	
when, to complaint may be put in.....	565
when plaintiff may file, to answer.....	568
proceedings on .....	569
<b>DISOBEDIENCE—</b>	
to lawful writ or order of process, contempt.....	617
<b>DISMISSAL—</b>	
of action without prejudice.....	601
<b>DOCKET—</b>	
to be kept by.....	622
to contain what.....	622
entries in, primary evidence of facts.....	623
index to, must be kept.....	624
must be delivered to successor.....	625
when office of Justice becomes vacant, disposal of.....	626
execution or other process may be issued upon, of predecessor....	627
<b>EXCESS—</b>	
of jurisdiction, found due may be remitted.....	605
<b>EXECUTION—</b>	
within what time may issue.....	612
to whom directed and contents of .....	613
renewal of.....	614
officer's duty on receipt of.....	615
proceedings supplemental to .....	616
<b>GARNISHMENT—</b>	
sections applicable thereto.....	581
<b>GUARDIAN—</b>	
when shall appoint.....	554
consent of, in writing, when necessary .....	554
<b>INFANT—</b>	
how served with process.....220	560
<b>JUDGMENT—</b>	
by confession.....	600
of dismissal entered without prejudice, when.....	601
upon verdict .....	602
must be entered at close of trial, when.....	603
when defendant liable to arrest .....	604
abstract of.....	608
effect of docketing.....	610

<b>JUSTICES' AND PROBATE COURTS (JUDGMENT)—Continued).</b>	<b>Section.</b>
not a lien unless abstract is recorded in Recorder's office.....	611
when defendant fails to appear.....	583
against defendant on demurrer.....	584
<b>JURISDICTION—</b>	
civil .....	36
civil, restricted.....	37, 636
territorial extent of civil.....	38
criminal .....	39
in case of joint liability of parties.....	543
in case of injury to person or property .....	543
in case of detention or injury of personal property .....	543
<b>JURORS—</b>	
for, by whom summoned.....	100
manner of summoning for.....	101
challenges to.....	597
<b>JURY—</b>	
how waived.....	595
issue of fact tried by.....	594
for, how impaneled.....	111
proceedings on forming, for.....	110
may be waived, how.....	595
adjournment on demand for.....	586
<b>JUSTIFICATION—</b>	
of sureties.....	721
<b>LIEN—</b>	
judgment, how created.....	611
<b>MINOR—See INFANT.</b>	
<b>NON-RESIDENT—</b>	
action may be commenced where.....	543
service of summons on, how.....	221
appointment of attorney to represent.....	222
<b>OFFER—</b>	
to compromise before trial.....	606
<b>PARTY—</b>	
voluntary appearance of, waives jurisdiction.....	543
may appear in person or by attorney.....	553
failure of either, trial may proceed on request of o her.....	596
may challenge jurors.....	597
each, entitled to how many challenges.....	597
<b>PLEADINGS—</b>	
form of.....	562
what are the, in.....	563
what may be oral.....	562
what may not be oral.....	562
<b>PROPERTY—</b>	
same provisions apply for delivery of personal, as in other Courts.	582
title to real, cannot be questioned.....	549



JUSTICES' AND PROBATE COURTS—(Continued).	Section.
<b>PUBLICATION—</b>	
of summons.....	221
manner of.....	222
<b>RETURN—</b>	
of summons, when to be made.....	556
<b>SET-OFF—See COUNTER CLAIM.</b>	
<b>SHERIFF—</b>	
may serve process, from.....	572
<b>STAY OF PROCEEDINGS—</b>	
when shall be granted.....	670
<b>SUBPOENA—</b>	
Justice may issue.....	630
Justice may issue blank.....	631
<b>SUMMONS—</b>	
jurisdiction on appearance without ..	543
how issued, and what to contain.....	555
when returnable.....	556
alias, may be issued, when.....	557
to be filled out, void unless.....	631
by whom and how served and returned.....	560
date of issuing, to be recorded in docket.....	622
<b>SURETIES—</b>	
on order of arrest.....	574
on writ of attachment.....	579
same provisions apply in replevin.....	582
<b>TITLE—</b>	
to real property not to be questioned in.....	549
<b>TRANSFER—</b>	
when Judge or Justice is a witness.....	544
when Judge or Justice is biased.....	544
in other cases.....	544
to District Court, when.....	546, 549
<b>UNDERTAKING—</b>	
on order of arrest.....	574
on release from arrest.....	588
on attachment must be required, when.....	579
to release attachment.....	580
on appeal.....	669
in replevin, same provisions apply.....	582
on obtaining adjournment of cause.....	589
deposit in lieu of.....	637
<b>VENUE—</b>	
of actions.....	543
ib.....	546
change of, in certain cases.....	574
<b>JUSTICE OF THE PEACE AND PROBATE JUDGE—</b>	
to transmit papers on transfer of action.....	212
limitation of jurisdiction of.....	87

<b>JUSTICE OF THE PEACE AND PROBATE JUDGE—</b> <i>(Continued)</i> .	<b>Section.</b>
jurisdiction of, in County.....	38
jurisdiction of, what, Sec. 36 to.....	39
civil jurisdiction of.....	36
to take acknowledgments.....	66
to take affidavits.....	66
not to issue writ of review.....	727
not to issue mandate.....	738
not to issue prohibition.....	752
<b>JUSTIFICATION—</b>	
of sureties in all cases.....	721
of sureties in claim and delivery.....	301
of sureties in arrest and bail.....	285
in defense of action for libel and slander.....	258
on attachment bond.....	336
when found sufficient.....	288
qualifications of bail.....	236
how to justify.....	287
<b>LABORERS—</b>	
liens.....	815
See LIENS.	
<b>LAND—</b>	
defined .....	13
<b>LANDLORD AND TENANT—</b>	
relation of, affecting adverse possession .....	151
may be joined as defendants in action of ejectment, etc.....	194
<b>LAW—</b>	
public and private statutes.....	904
books presumed correct.....	906
how authenticated.....	907
evidence to prove.....	908
recitals in, how far evidence.....	909
See EVIDENCE.	
<b>LEASEHOLD—</b>	
subject to redemption, when .....	450
of less than two years, sale absolute.....	450
<b>LEGAL CAPACITY—</b>	
not having, ground for demurrer.....	232
<b>LIABILITY—</b>	
contingent judgment; by confession.....	777
of officer for arresting witness.....	980
when there is no.....	981
of Sheriff on resale under execution .....	447
See SHERIFF.	
<b>LIBEL AND SLANDER—</b>	
complaint for.....	257
answer, what to contain.....	258
evidence in.....	258

**LIBRARIES—**

exempt from execution ..... 440

**LICENSE—**

of attorney to practice law ..... 115

penalty for practicing without ..... 119

**LIEN—**

of judgment, duration ..... 425

from time of docketing judgment ..... 425

by transcript of judgment being filed ..... 428

in another county ..... 428

holder of, as purchaser in partition ..... 521

on foreclosure of mortgage ..... 468

when debt not all due ..... 470

See FORECLOSURE.

**MECHANICS—**

property subject to, for ..... 815

for grading and filling lots and streets ..... 817

what interest in land subject to ..... 818

effect of ..... 819

claim of, to be filed in Recorder's office ..... 820

upon separate parcels ..... 821

claim to be recorded, fees of Recorder ..... 822

time of continuance of ..... 823

sub-contractors ..... 816, 824

sub-contractors, when paid out of proceeds ..... 824

costs allowed ..... 825

Court to declare rank of ..... 826

execution for deficit ..... 826

not to impair right of recovery of debt ..... 828

rules of practice ..... 829

new trials and appeals ..... 829

**LIFE INSURANCE—**

policy of, exempt from execution ..... 440

**LIMITATION—**

of time for issuing of execution ..... 430

of time of redemption ..... 452

statute of, to continue under the Code ..... 6

to civil actions ..... 141

how set up ..... 255

**FOR REAL PROPERTY—**

when the people will not sue ..... 142

seizin within five years, when necessary in ..... 143

seizin necessary in actions, or defense arising out of title to, or rents ..... 144

entry on real estate ..... 145

possession, when presumed ..... 146

occupation deemed under legal title, unless adverse ..... 146

occupation, when deemed adverse ..... 147

adverse possession under instrument on judgment, what deemed .. 148

actual occupation under claim of title, deemed adverse ..... 149

<b>LIMITATION (FOR REAL PROPERTY)—</b> <i>(Continued).</i>	Section.
adverse possession under claim of title not written, what constitutes	150
adverse possession, how affected by relation of tenancy.....	151
right of possession not affected by descent caste.....	152
disabilities excluded from time to commence actions.....	153
<b>IN OTHER ACTIONS—</b>	
within what periods prescribed .....	154
within six years.....	155
within five years.....	156
within four years.....	157
within three years.....	158
within two years.....	159
within one year.....	160
within six months.....	161
none on certain deposits in banks.....	163
of claim against county.....	161
for relief not hereinbefore provided.....	164
where cause of action accrues on mutual account.....	162
of actions by the people.....	165
actions to redeem.....	166
to redeem part of mortgaged premises.....	167
<b>GENERALLY—</b>	
when an action is commenced.....	168
exception, where defendant is out of Territory.....	169
exception, as to persons under disability.....	170
death of party.....	171
in suits by aliens, time of war to be deducted.....	172
provisions, where judgment has been reversed.....	173
provision, where action is stayed by injunction.....	174
provision, where person entitled dies before limitation expires....	171
disability must exist when right of action accrued.....	175
when two or more disabilities exist, etc.....	176
applicable to actions against directors.....	177
acknowledgment or new promise must be in writing.....	178
of time to set aside judgment and to answer to the merits.....	267
limitation laws of other States and Territories, effect of.....	179
existing causes of action not affected.....	180
existing statutes not affected by Code.....	6
the word "action" construed.....	181
how pleaded .....	255
<b>LIS PENDENS—</b>	
in real actions.....	218
in partition.....	490
See NOTICE.	
<b>LOST PAPERS—</b>	
copy of, may be filed.....	710

MANDATE—	Section.
defined .....	737
when and by what Courts issued.....	738
jurisdiction to issue writ of.....20,	26
writ to issue and be heard at chambers.....	755
when and upon what to issue.....	739
must be either alternative or peremptory.....	740
alternative, to issue.....	741
peremptory, to issue.....	741
adverse party to answer under oath.....	742
jury trial, when may be ordered.....	743
applicant to demur to, or countervail answer.....	744
motion for new trial.....	745
provisions for new trials on.....	757
to transmit verdict to Court.....	746
hearing of motion.....	746
default of, or insufficiency of answer.....	747
damages, costs, and peremptory.....	748
service of.....	749
penalty for disobedience of writ.....	750
MARK—	
included in signature.....	13
MARRIAGE—	
how affects Statute of Limitations.....	170
is no defense in actions for unlawful detainer.....	802
evidence of, may be perpetuated.....	986
MARRIED WOMAN—	
may sue alone.....	185
to defend, in her own right.....	186
property of, exempt.....	439
earnings of, exempt.....	439
responsibilities of, as sole trader.....	894
how to become sole trader.....	885
application as sole trader, Sec. 886 to.....	895
is not witness against husband.....	899
MASCULINE—	
means feminine and neuter.....	13
MATERIAL ALLEGATIONS—	
defined.....	260
MEASURE OF DAMAGES—	
in eminent domain proceedings.....	861
in certain actions for trespass.....	474
MECHANICS—	
property of, exempt from execution.....	440
See LIENS.	
MEMORANDUM—	
of costs, when furnished.....	703
of costs, on return of appeal.....	704

	Section.
<b>MERGER—</b>	
remedies not merged.....	16
<b>METES AND BOUNDS—</b>	
how property described in complaint.....	252
<b>MINER—</b>	
property and implements of, exempt from execution.....	440
<b>MINING CLAIMS—</b>	
in action for, to be seized within five years.....	143
presumption of such seizin.....	146
customs, rules, and usages control.....	486
liens of mechanics and others upon.....	815
<b>MINING CUSTOMS—</b>	
in actions concerning mining claims.....	486
<b>MINORITY—</b>	
how affects limitation of actions.....	170
<b>MINUTES—</b>	
special verdict to be entered in.....	385
verdict to be entered in.....	388
waiver of jury trial entered in.....	389
agreement to refer to be entered in.....	394
<b>MISCONDUCT—</b>	
of jury is the ground for new trial.....	411
<b>MISDEMEANOR—</b>	
jurisdiction.....	39
<b>MISJOINDER—</b>	
of parties or actions ground for demurrer.....	292
<b>MISTAKE—</b>	
relief from, may be had.....	267
<b>MITIGATION—</b>	
alleged and proved in libel and slander.....	258
<b>MODIFICATION—</b>	
of award by Court, when and how made.....	882
See AWARD; JUDGMENT.	
<b>MONTH—</b>	
defined .....	13
<b>MORTGAGE—</b>	
not a conveyance.....	482
See FORECLOSURE.	
<b>MOTHER—</b>	
authorized to sue for seduction of daughter.....	190
authorized to sue for injury or death of child, when.....	191
<b>MONEY—</b>	
deposited in lieu of bail, how disposed of.....	292
deposit of, in Court.....	347
such, paid to clerk, how disposed of.....	348
in actions for recovery of, jury to determine amount.....	386
judgment for.....	421
<b>MOTIONS AND ORDERS—</b>	
what is an order or motion.....	680

<b>MOTIONS AND ORDERS—</b> <i>(Continued).</i>	<b>Section.</b>
applicable to special proceedings.....	725
where made.....	681
notice of motion, at what time to be given.....	682
transfer on and notice to show cause.....	683
order for payment of money, how enforced.....	684
motion for postponement.....	364
motion for discharge of attachment.....	337
motion for new trial, when heard.....	414
motion for new trial in mandate.....	745
See ORDER; NOTICE.	
<b>NAME—</b>	
of jurors, to be entered with verdict.....	388
of party to be in summons.....	216
of parties to pleading amended.....	267
plaintiff ignorant of, of the defendant.....	268
See CHANGE OF NAME; FICTITIOUS NAME.	
<b>NEGLECT—</b>	
in pleadings, relief from may be had.....	267
suit for, by personal representatives.....	191
when resulting in injury or death, who may sue.....	192
<b>NEGOTIABLE INSTRUMENTS—</b>	
cross demands, in actions on, how set-off.....	240
<b>NEUTER GENDER—</b>	
included in masculine.....	13
<b>NEWLY DISCOVERED EVIDENCE—</b>	
ground for new trial.....	411
<b>NEW MATTER—</b>	
answer, when may contain.....	237
in answer deemed controverted.....	259
may be demurred to.....	243
issue arises on, when.....	359
<b>NEW PROMISE—</b>	
must be in writing to take case out of statute.....	178
<b>NEW TRIAL—</b>	
definition of.....	410
adverse party deemed to have excepted to ruling on motion for... ..	403
when, may be granted.....	411
on what papers moved for.....	412
notice of motion, upon whom served, and what to contain.....	413
motion to be heard.....	414
to make written statement.....	415
motion for, in mandate.....	745
motion for, in prohibition.....	754
<b>NON-JUDICIAL DAYS—</b>	
effect of adjournment to.....	47
what are.....	7
how computed.....	8
performance of acts on next day.....	9



<b>NON-RESIDENT—</b>	<b>Section.</b>
place of trial of actions against .....	208
service of summons on .....	222
pleadings of, how verified .....	245
when allowed to open judgment by default and answer to merits..	267
attachment to issue against.....	319
proof required in action, on default of.....	356
summons in partition suits, served on.....	492
proceeds of sales of estates of, in partition .....	523
duties making investments .....	526
service of notices and papers on.....	689
to furnish security for costs .....	706
effect of failure to furnish such security.....	707
<b>NONSUIT—</b>	
judgment of, may be entered .....	354
<b>NOTARY PUBLIC—</b>	
seal exempt from execution .....	440
to administer oath or affirmation .....	992
to take deposition in this Territory .....	968
<b>NOTICE—</b>	
of change of attorney.....	123
of <i>lis pendens</i> to be filed.....	218
of justification of bail.....	285
to settle exceptions, given to adverse party.....	406
of motion for a new trial.....	413
of sale on execution.....	442
penalty for selling under execution without.....	443
after appearance, who entitled to.....	688
effect of, on liens.....	819
demanding inspection of books and documents.....	679
insufficiency of, no ground for dismissing appeal.....	657
without title of action, when valid.....	711
not required to vacate order, when.....	640
of motion, when to be given.....	682
of service, manner of serving.....	685
of service by mail, when made.....	686
of service by deposit in Post Office.....	687
of service when, need not be made.....	688
of service on attorney, when to be made.....	689
of service on non-resident, how made.....	689
of service by telegraph.....	691
of abstract in partition.....	583
of application for injunction.....	312
of injunction to corporation.....	315
of motion to vacate injunction.....	316
of <i>lis pendens</i> , filed in real actions.....	218
to be served in partition.....	497
to tenant, of unlawful detainer.....	797

NOTICE—(Continued).	Section.
to tenant, at will or by sufferance.....	797
of motion, for survey.....	480
of arrest of defendant.....	576
to produce written instruments.....	924
on adverse parties of filing award.....	880
to parties on return of jury for instructions.....	378
of sale under execution.....	442
of claim to contribution.....	459
of motion for new trial to be served.....	413
of appeal, what to state, and when served.....	643
of appeal, in Justices' and Probate Courts.....	665
of application for mandate.....	741
of application for writ of review.....	728
of application for discharge from imprisonment.....	784
of application for discharge, how served.....	785
of application as sole trader.....	886
of taking deposition out of territory.....	963
of taking deposition in territory.....	968
See APPLICATIONS ; CITATIONS.	
NUISANCE—	
defined.....	471
OATH—	
defined .....	13
administered by Courts of justice.....	42
administered by judicial officers.....	64
arbitrators may administer.....	878
generally, who may administer.....	992
how administered.....	993
of attorney, and counselor.....	116
form of, to jury.....	370
of prisoner, confined on civil process.....	788
form may be varied.....	994
form, in discretion of Court.....	995
affirmation, equivalent to.....	996
of receiver.....	344
See AFFIRMATION.	
OBJECTIONS—	
When taken by demurrer or answer.....	235
when deemed waived.....	236
to appointment of referee.....	398
to dissolution of corporation.....	848
OCCUPANT—	
of real property, in forcible entry and detainer.....	796
See LIMITATION, STATUTE OF.	
OFFER TO COMPROMISE—	
proceedings under.....	678
OFFICE—	
usurpation of, proceedings for, Sec. 535 to.....	541

**OFFICIAL DOCUMENTS—**

Section.

how different kinds of, proved.....	914
enumerated, that may be proved.....	914
every one may inspect.....	902
copies of, to be given, when.....	903

See WRITINGS ; JUDGMENTS, ETC.

**ORDER—**

defined.....	680
in special proceedings.....	725
where made.....	681
transfer of, to show cause.....	683
may be enforced.....	64
for payment of money, how enforced.....	684
contempt, to make second application for.....	67
how reviewed.....	639
made out of Court, to be vacated.....	640
duty of Clerk, on appeal.....	661
of Probate Courts, appealable.....	662
served by telegraph.....	691
for new trial, Supreme Court costs.....	698
copy to be filed.....	866
copy to form part of judgment roll.....	424
to show cause before issuing injunction.....	314
for investment of funds by receiver.....	346
for sale of attached property.....	329
to deposit money in controversy.....	347
granting or refusing new trial, excepted to.....	403
in supplementary proceedings.....	467
for surveys in real actions.....	480
for survey, to contain what.....	481
of sale in foreclosure.....	470
granting or refusing new trial.....	642
dissolving attachment.....	649
of Court, for transmission of papers.....	668
for inspection of documents.....	679
dismissing action for want of security.....	707
requiring debtor to answer.....	460
for examination of debtor of debtor.....	463
for application of property of debtor.....	465
reversing appointment of executor.....	664
for trial of issue in mandate.....	743
for discharge of person imprisoned on civil process.....	789
of commitment for contempt.....	843
for dissolution of corporation.....	847
for condemnation of land.....	866
for changing name of person.....	874
of submission to arbitration.....	877

<b>ORDER—</b> (Continued).	<b>Section.</b>
of new hearing by arbitrators.....	881
of arrest in civil actions .....	272
how to obtain.....	273
in Justices' and Probate Courts.....	573
in which proceedings are had on trial of action.....	371
See MOTIONS ; ARREST AND BAIL.	
<b>ORIGINAL JURISDICTION—</b>	
of Supreme Court, what.....	20
of District Courts.....	26
of Probate Courts.....	31
civil, of justice.....	36
criminal, of justice.....	39
<b>PAPERS—</b>	
to be transmitted on transfer of action.....	212
to be used on motion for new trial.....	412
constituting judgment roll.....	424
filing and service of, Sec. 685 to.....	691
lost, supplied.....	710
without title of action valid.....	711
to be furnished by appellant.....	653
copies of, how certified.....	656
taken by jury, on retiring.....	376
See NOTICE.	
<b>PARTIALITY—</b>	
ground for change of venue.....	210
<b>PARTY—</b>	
action to be in name of real, in interest.....	182
assignment no prejudice to defense.....	183
who may sue without joining person beneficially interested.....	184
married woman as.....	185
when wife may defend as.....	186
infant must appear by guardian.....	187
infant's guardian, how appointed.....	188
unmarried female plaintiff for her own seduction.....	189
father plaintiff for seduction of daughter.....	190
father plaintiff for injury or death of child.....	191
representative plaintiff for death caused by wrongful act.....	192
may be joined as plaintiffs .....	193
may be joined as defendants.....	194
in interest, when to be joined.....	195
one or more may sue or defend for all.....	197
holding title under common source, may join.....	196
in interest, when joined.....	197
plaintiff may sue in one action different parties, when.....	198
tenant in common may sever action.....	199
disability of, not to abate action.....	200
proceedings on disability of.....	200

<b>PARTY—(Continued).</b>	<b>Section.</b>
another may be substituted.....	201
intervention of, when and how.....	202
may be sued by name of association.....	203
Court to decide controversy, or order otherwise.....	204
stipulation by, for change of venue.....	211
to action, how designated.....	139
defendant sued by any name, when.....	268
may appeal, and on appeal, how designated.....	641
to actions, to redeem from mortgage.....	166
to action, for foreclosure.....	468
to action, for nuisance.....	471
liable for waste.....	472
plaintiff in action for partition.....	487
defendant in action for partition.....	489
may be ordered in, in partition.....	496
to action, for usurpation of office or franchise.....	535
to special proceedings, designated.....	724
defendant in forcible entry and detainer.....	802
defendant in condemnation of land.....	859
may submit to arbitration.....	875
to an action to be stated in summons.....	216
to an action to be stated in complaint.....	230
misjoinder of, ground for demurrer.....	232
defect of, ground for demurrer.....	232
pleading to be subscribed by.....	245
in pleading, need not set forth items of account.....	251
may amend pleadings of course.....	266
pleadings may be amended as to name of.....	267
fictitious.....	268
judgment, the final determination of rights of.....	350
may have nonsuit entered.....	354
may bring issue to trial.....	363
may challenge jurors.....	368
order of proceedings of, on trial.....	371
may ask for special instructions to jury.....	373
may waive jury trial.....	389
may agree to reference of cause.....	394
not consenting, when reference may be ordered.....	395
to agree upon number of referees.....	396
may object to referees.....	397
both may take exceptions.....	402
when exception refused, may petition to Supreme Court to prove the same.....	408
on what grounds may move for new trial.....	411
on what papers may move for new trial.....	412
to actions, to determine claims to real property.....	476
may enter upon land to survey it.....	480

<b>PARTY—(Continued.)</b>	<b>Section.</b>
to action for partition of real property.....	487
in partition, interest of all to set forth in complaint.....	488
if unknown, that fact to be stated in complaint.....	488
to pay expenses of partition.....	503
may consent to one referee in partition.....	532
Court to protect rights of unknown.....	515
<b>PARTITION—</b>	
who may bring action for.....	487
interests of all parties to be set forth.....	488
lienholders not of record need not be parties.....	489
plaintiff must file notice of lis pendens.....	490
summons, to whom must be directed.....	491
unknown parties may be served by publication.....	492
answer of defendants, what to contain.....	493
rights of all parties may be ascertained in one action.....	494
partial, may be made.....	495
lienholders must be made parties, or referee be appointed.....	496
lienholder must be notified to appear.....	497
Court may order sale or, and appoint referees therefor.....	498
must be made according to rights of parties.....	499
referees to report proceedings.....	500
action of Court on report, judgment thereon conclusive.....	501
judgment in, how enforced.....	435
judgment not to affect tenant for years.....	502
expenses of, to be apportioned.....	503
lien on undivided interest, a charge on what.....	504
estate for life or years, how may be set off in.....	505
application of proceeds of sale of incumbered property.....	506
party holding other securities may be required to first exhaust them.....	507
proceeds of sale, disposition of.....	508
when paid into Court, cause may be continued for determination of claims.....	509
sales by referee to be at public action.....	510
Court must direct terms of sale.....	511
referees may take security for purchase money.....	512
tenants, whose estates are sold, to receive compensation.....	513
Court may fix compensation.....	514
Court must protect unknown tenants.....	515
Court must ascertain value of, and secure future contingent interests.....	516
terms of sale to be made known at time.....	517
lots may be separately sold.....	517
who may not be purchasers.....	518
referees must make report of sales.....	519
conveyance may be executed on confirmation.....	520
proceedings, if lienholder becomes purchaser.....	521

<b>PARTITION—</b> ( <i>Continued</i> ).	<b>Section.</b>
conveyance, must be recorded.....	522
conveyance, a bar against parties.....	522
proceeds belonging to unknown parties must be invested.....	523
investment made in name of Clerk.....	524
securities taken for interests of parties, when ascertained.....	525
duties of making investments.....	526
on unequal, compensation may be adjudged.....	527
share of infant may be paid to guardian.....	528
share of insane person may be paid to guardian.....	529
guardian may consent to, without action, and execute releases....	530
costs of, a lien.....	531
Court by consent, may appoint single referee.....	532
abstract of title, when furnished.....,.....	533
<b>PENALTY—</b>	
actions for, where tried and enforced.....	206
for practicing law without license.....	119
for disobeying mandate.....	750
See FINES.	
<b>PENDENCY OF ACTION—</b>	
when there is a .....	714
notice to be filed in real actions.....	218
ground for demurrer to subsequent suit.....	232
<b>PEOPLE—</b>	
when will not sue.....	142
not required to give security for injunction.....	313
nor are required to give notice.....	315
execution to issue in name of.....	431
<b>PERFORMANCE—</b>	
of conditions, how averred.....	254
time of, of act extended.....	719
<b>PERSON—</b>	
defined.....	13
<b>PERSONAL INJURY—</b>	
who may sue for, Sec. 190.....	192
<b>PERSONAL PROPERTY—</b>	
defined.....	13
is attached.....	323
when sold under attachment.....	328
order for sale of.....	329
attached claim of, by third person.....	330
<b>PESTILENCE—</b>	
removal of Court on account of.....	50
<b>PETIT LARCENY—</b>	
jurisdiction of.....	39
<b>PETITION—</b>	
for change of name to specify what.....	872
to be published four weeks.....	873
for sole trader to contain what.....	887



PERISHABLE—	Section.
property attached to be sold.....	328
property sold under execution, notice of.....	442
PERPETUATING TESTIMONY—	
evidence may be perpetuated.....	985
manner of application for order.....	986
notice of time and place to be given.....	986
manner of taking the deposition.....	988
deposition to be filed.....	989
when the evidence may be produced.....	990
effect of the deposition.....	991
PHRASES—	
how construed.....	12
in what sense employed.....	12
many, enumerated in.....	13
"Code of Civil Procedure," how designated.....	15
PHYSICIAN—	
not subject to duty as juror.....	81
what property of, exempt from execution.....	440
disqualified as a witness when.....	899
PLACE—	
OF HOLDING COURTS—	
Supreme.....	25
Probate.....	34
Judge may order rooms for.....	52
Judge may change, in certain cases.....	50
parties to appear at the appointed.....	51
OF TRIAL—	
to be where subject is situated.....	205
to be where causes of action arose.....	206
of actions against or between counties.....	207
of actions where parties reside.....	208
to be had in any county, unless defendant demand otherwise.....	209
may be changed by Court, on motion.....	210
from one Court to another.....	211
when adverse party deemed to except ruling on motion for change of.....	405
papers to be transmitted, costs, and jurisdiction.....	212
proceedings in cases transferred.....	213
PLAINTIFF—	
party complaining known as.....	139
all having interest may be joined.....	193
who must be joined as.....	197
when one or more may sue for benefit of all.....	197
when they may in one action sue persons severally liable.....	198
when property in action lies in two counties, may select either county for trial.....	206
may have summons on complaint, when.....	215

**PLAINTIFF—(Continued.)****Section.**

name of attorney of, to be indorsed on summons.....	216
pleadings of.....	28
complaint, first pleading of.....	229
may unite several causes of action.....	231
want of capacity to sue ground for demurrer.....	232
may demur to answers or defenses.....	243
must swear to facts in complaint, except.....	245
may deny admissibility of instrument in answer.....	247
proceedings when he is ignorant of defendant's name.....	268
affidavit of, for arrest of defendant.....	273
must give undertaking for arrest.....	274
may except to sureties on bond for release of defendant.....	284
must be served with notice of justification of sureties.....	285
may claim delivery of personal property.....	297
must make affidavit in replevin.....	298
may require Sheriff to take property in replevin.....	299
must give undertaking in replevin.....	300
property to be redelivered to, when.....	303
may claim replevied property by indemnifying Sheriff.....	307
when may obtain injunction.....	310
to give bond on injunction.....	313
when territory or county is, need not give such bond.....	313
may oppose motion to dissolve injunction.....	316
to make affidavit for attachment.....	319
to give undertaking on attachment.....	320
to notify Sheriff of credits of defendant, subject to attachment....	324
judgment for, in attachment.....	331
may sue on bond to release attached property.....	333
may oppose motion to discharge attachment.....	338
shall obtain what relief when no answer is filed.....	353
judgment when several are joined in an action.....	351
may dismiss action.....	354
judgment by default, for.....	356
may bring issue to trial.....	363
may take verdict or dismissal.....	363
may challenge jurors.....	367
allowed four peremptory challenges.....	367
to open trial, how.....	371
to commence and close argument.....	371
judgment for, on issue of law, proceedings thereon.....	393
may bring cause before Court for argument.....	419
may waive jury trial.....	389
may object to referee.....	397
may move for new trial.....	411
when, cannot recover costs.....	477
when his title terminates pending suit.....	478
what, must allege in partition suit.....	488

PLAINTIFF—(Continued).	Section.
to file <i>lis pendens</i> in partition suit.....	490
rights of absent, may be determined in partition suit.....	494
to notify lien holders of partition suit.....	497
PLEADINGS—	
definition of.....	226
part of judgment roll.....	424
Code prescribes forms and rules of.....	227
forms and rules in Justices' and Probate Courts, Sec. 562 to.....	571
proceedings against joint debtors.....	676
what, are allowed.....	228
complaint, the first, in an action.....	229
complaint to contain.....	230
causes may be joined in.....	231
defendant may demur.....	232
demurrer must specify.....	233
may demur to part of complaint.....	233
demurrer and answer at same time.....	233
proceedings on amendment of complaint.....	234
what objections may be taken by answer.....	235
objections to complaint deemed waived.....	236
what, answer to contain.....	237
by counter claim, set up.....	238
counter claims, may be set off.....	240
by answer, may contain several defenses.....	241
plaintiff may demur.....	243
verification of, when, Sec. 245 to.....	248
GENERALLY—	
to be liberally construed.....	249
sham and irrelevant, may be stricken out.....	250
account, how stated in.....	251
description of real property in.....	252
how to set up judgments.....	253
how to set up condition precedent.....	254
how to set up Statute of Limitations.....	255
how to set up private statutes.....	256
how to set out libel and slander in complaint.....	257
how to set out special damage in libel.....	257
answer in libel and slander.....	258
allegation, not denied, deemed true.....	259
allegation, when controverted.....	259
what is a material allegation.....	260
supplemental.....	261
subsequent to complaint, to be filed and served.....	262
special issues not made, trial of.....	140
to be transmitted when cause transferred.....	212
within what time defendant may file.....	216
may be amended.....	266

<b>PLEADINGS—(GENERALLY) (<i>Continued</i>).</b>	<b>Section.</b>
may be amended by order.....	267
may be amended as to name.....	268
defects, certain disregarded.....	269
issue of law raised by.....	358
order striking out, excepted to.....	403
<b>PLURAL NUMBER—</b>	
included in the singular.....	13
<b>POSSESSION OF REALTY—</b>	
entry on real estate.....	145
when presumed.....	146
occupation deemed under legal title unless adverse.....	146
occupation under written instrument or judgment, when deemed adverse.....	147
what constitutes adverse possession under written instrument or judgment.....	148
premises actually occupied under claim of title deemed to be held adversely.....	149
what constitutes adverse, under claim of title not written.....	150
relation of landlord and tenant as affecting adverse.....	151
right of, not affected by descent cast.....	152
certain disabilities excluded from time to commence actions.....	153
not necessary to bring action to quiet title.....	476
<b>ACTIONS FOR—</b>	
when the people will not sue.....	142
seizin within five years, when necessary in action for real property	143
such seizin, when necessary in action or defense arising out of title to or rents of real property.....	144
See SEIZIN.	
<b>POSTPONEMENT—</b>	
for absent testimony.....	364
what showing to be made.....	364
in proceedings for mandate, when ordered.....	743
amending complaint in forcible entry and detainer, no cause.....	810
failure to return commission, no cause for.....	966
costs on, discretionary with Court.....	700
when may be had in Justices' and Probate Courts.....	586
by consent.....	587
what must be shown to obtain.....	588
when, on affidavit.....	588
See ACTIONS.	
<b>PRESENT TENSE—</b>	
includes future.....	13
<b>PRIVATE PROPERTY—</b>	
may be taken for public use.....	853
ib.....	854
See EMINENT DOMAIN.	

<b>PRIVATE STATUTES—</b>	<b>Section.</b>
defined .....	904
pleaded, how .....	256
books containing statute presumed correct .....	906
recitals in, evidence .....	909
<b>PRIVATE WRITINGS—</b>	
books, maps, etc., how far evidence .....	923
notice to be given to produce .....	924
writings called for and inspected may be withheld .....	925
execution of, how proved .....	926
when others than subscribing witness may testify .....	927
when evidence of execution not necessary .....	928
entries of decedents as evidence .....	929
how acknowledged and certified .....	930
public records of, proved .....	915
See WRITINGS.	
<b>PRIVILEGED COMMUNICATIONS—</b>	
those to whom made enumerated .....	899
<b>PROBATE COURT—</b>	
to be in each county .....	30
jurisdiction .....	31
presumptions in favor of the judgments .....	32
terms of, in the various counties .....	33
at what places terms held .....	34
See JUSTICES' AND PROBATE COURTS.	
<b>PROBATE JUDGE—</b>	
to determine successor to Justice of the Peace .....	629
when may discharge imprisoned debtor .....	784
where to reside .....	56
to be notified of time of drawing jury .....	90
to be present at drawing of jury .....	91
when disqualified, trial to be transferred .....	211
may order arrest of defendant .....	272
may justify sureties on appeal bond .....	651
may order inspection of papers .....	679
may be witness in his own Court .....	909
may order examination of prisoner as witness .....	951
may issue commission to take testimony .....	963
shall not have partner practicing law .....	62
See FORCIBLE ENTRY AND DETAINER; COURTS; JUDICIAL OFFICERS.	
<b>PROCEEDINGS—</b>	
powers of Court over its .....	42
what Courts may make rules to regulate .....	43
rules take effect .....	44
when non-attendance of Judge at Court .....	48
not affected by vacancy .....	69
not affected by lapse of term .....	69

<b>PROCEEDINGS—</b> <i>(Continued).</i>	Section.
in the English language.....	70
what abbreviations used in.....	71
numbers expressed by figures.....	71
in case juror is sick.....	879
what a contempt.....	830
See SPECIAL PROCEEDINGS.	
<b>PROCESS—</b>	
defined.....	13
in Justices' Courts, may issue where.....	38
blanks must be filled by Justice or Clerk.....	631
what is a contempt of.....	830
<b>PROFESSIONAL IMPLEMENTS—</b>	
exempt from execution.....	440
<b>PROHIBITION—</b>	
writ defined.....	751
when Supreme Court may issue.....	20
when District Courts may issue.....	26
the counter part of mandate.....	751
may issue where and when.....	752
may be alternative or peremptory.....	753
provisions respecting.....	754
to issue and be heard in vacation.....	755
rules of practice for.....	756
appeals and new trials in.....	757
<b>PROOF—</b>	
of service of summons.....	224
<b>PROPERTY—</b>	
defined.....	13
<b>PUBLIC BUILDINGS—</b>	
exempt from execution.....	440
right of eminent domain exercised for.....	851
<b>PUBLIC CALAMITY—</b>	
removal of Court on account of.....	50
<b>PUBLIC OFFENSES—</b>	
in Justices' Courts.....	39
<b>PUBLIC OFFICER—</b>	
trial of.....	206
actions against.....	206
arrested for embezzlement.....	271
excused from giving testimony.....	899
punished for disobedience of writ.....	750
to give copy of public writing on demand.....	903
See OFFICER.	
<b>PUBLIC RECORDS—</b>	
judicial, defined.....	910
authenticated.....	911
of foreign country, how authenticated.....	912

<b>PUBLIC RECORDS—</b> <i>(Continued).</i>	<b>Section.</b>
oral evidence of a foreign.....	913
of other official.....	914
entries in official books primary evidence, Sec. 916 to.....	921
Justices, judgment in other States, how proved.....	917
ib.....	918
<b>PUBLIC WRITINGS—</b>	904
rights of citizens to inspect and copy.....	902
public officers bound to give copies.....	903
four kinds of.....	905
public and private statutes defined.....	9 4
books containing same presumed correct.....	906
public seal authenticates law or document.....	907
other evidence of, laws of other States.....	908
recitals in statute, how far evidence.....	909
judicial record defined.....	910
record, how authenticated, as evidence.....	911
record of foreign country, how authenticated.....	912
oral evidence of foreign record.....	913
manner of proving official documents.....	914
official certificates, contents of.....	919
certificate of purchase primary evidence of ownership.....	920
entries made by officers or Boards primary evidence.....	921
See PUBLIC RECORDS ; WRITINGS.	
<b>QUIETING TITLE—</b>	
who to be joined as defendants in actions for.....	194
who are parties to action.....	476
in what case plaintiff cannot recover costs.....	477
plaintiff's title terminating during suit.....	478
improvements, when allowed as set-off.....	479
order for survey of land.....	480
order, how served.....	481
liability for unnecessary injury.....	481
mortgage not a conveyance.....	482
<b>QUO WARRANTO—</b>	
See USURPATION OF OFFICE.	
<b>REAL PROPERTY—</b>	
jurisdiction of actions for.....	37
limitation of actions for, Sec. 142 to .....	153
place to try actions for.....	205
entry and possession of.....	145
ib.....	146
ib.....	147
ib.....	148
ib.....	149
intervention in actions for.....	202
claims for, may be united.....	231
how described in pleadings.....	252



<b>REAL PROPERTY—</b> <i>(Continued).</i>	<b>Section.</b>
how attached by officer.....	323
execution against, what to contain.....	431
return of execution, how made.....	432
how to enforce judgments against.....	433
execution, to whom issued.....	436
how seized under execution.....	437
sale of, in partition.....	498
sale of, in foreclosure.....	470
See REDEMPTION; LIMITATION, STATUTE OF.	
<b>RECEIVERS—</b>	
appointment of, in what cases.....	341
on dissolution of corporation.....	342
who not to be appointed.....	343
oath and undertaking by.....	344
powers of.....	345
investments of funds by.....	346
<b>RECORD—</b>	
copy of, to be under seal of Court.....	55
See PUBLIC RECORDS.	
<b>RECOVERY OF PROPERTY—</b>	
claims for, to be united.....	231
<b>REDEMPTION—</b>	
what persons are redemptioners.....	451
property may be redeemed from execution sale.....	452
judgment debtor or other redemptioner may redeem.....	453
notice of.....	453
who to receive payments.....	454
what kind of money to be paid.....	454
redemptioner must do what.....	455
Court to restrain waste pending time for redemption.....	456
who to receive rents and profits.....	457
limitation of action for.....	166
of action for part of mortgaged premises.....	167
<b>REFEREES—</b> See REFERENCE.	
<b>REFERENCE—</b>	
may be ordered on trial of attorney.....	136
may be ordered to take account.....	393
may be ordered on agreement of parties.....	394
when may be ordered on motion.....	395
number of referees and their qualifications.....	396
what party may object.....	397
grounds of objection.....	397
objections, how disposed of.....	398
referees to report within ten days.....	399
effect of referees' finding.....	400
exception to findings.....	401
may be had in partition.....	496
ib.....	498

REFERENCE—( <i>Continued</i> ).	Section.
of the trial in partition.....	497
to divide property, rules to govern.....	499
must report proceedings.....	500
report set aside or affirmed.....	501
expenses of, in partition.....	503
security for purchase money in partition.....	512
referees cannot be purchasers in action.....	518
to report sale of property.....	519
all to meet, but two may act.....	718
REHEARING—	
in Supreme Court.....	24
RELIEF—	
granted by judgment.....	353
REMEDIES—	
civil and criminal, not merged.....	16
See ACTIONS; CIVIL ACTIONS.	
REMITTITUR—	
on judgment of Supreme Court.....	22
See RULES OF SUPREME COURT.	
REMOVAL OF ACTION—See TRANSFER.	
RENTS AND PROFITS—	
pending redemption.....	457
of real property, what seizin required in action arising out of.....	144
of real property, where no written lease.....	151
claims for, may be united in actions.....	231
to be paid to purchaser under execution.....	457
REPLEVIN—See CLAIM AND DELIVERY.	
RETURN—	
of execution.....	432
of gold dust, under execution.....	437
See EXECUTION; SUMMONS; SUBPOENA.	
REVIEW—	
jurisdiction of Supreme Court to issue writ of.....	20
writ issued by District Court.....	26
issued by Supreme Court at chambers.....	58
may issue and be heard in vacation.....	755
writ defined.....	726
when and by what Courts granted.....	727
application for, how made.....	728
is to be directed to whom.....	729
contents of writ.....	730
proceedings in inferior Court may be stayed or not.....	731
service of writ.....	732
the extent of review under writ.....	733
a defective return may be perfected.....	734
hearing and judgment on.....	734
copy of judgment must be sent to inferior tribunal.....	735

<b>REVIEW—</b> <i>(Continued)</i> .	Section.
judgment rolls.....	736
rules of practice applicable to.....	756
rules relating to new trials and appeals.....	757
<b>RIGHTS—</b>	
civil, when not merged.....	16
<b>RULES—</b>	
may be made by Court of record.....	43
when to take effect.....	44
See PROCEEDINGS; COURTS OF JUSTICE.	
<b>SALES OF REALTY—</b>	
in foreclosure, how conducted.....	470
when to be ordered in partition.....	498
proceeds of, incumbered, how applied.....	506
must be at auction.....	510
terms of, directed by Court.....	511
terms of, made known at time.....	517
who may not purchase.....	518
conveyance, when executed.....	520
record of the conveyance.....	522
See EXECUTION; PARTITION.	
<b>SATISFACTION OF JUDGMENT—</b>	
by whom acknowledged.....	66
how it must be entered.....	429
<b>SEAL—</b>	
what the word includes.....	10
what Courts have.....	53
must be kept by Clerk.....	54
to what proceedings affixed.....	55
must be affixed to execution.....	431
L. S. or, to be telegraphed.....	691
in what way public, made.....	922
of what, Courts take judicial notice.....	896
public, authenticates law or document.....	907
record, how authenticated by.....	911
authentication of Justice's record or docket by.....	918
must be affixed to official certificate.....	919
sign or scroll may be used for.....	922
<b>SECULAR—</b>	
acts not to be performed on holidays.....	9
<b>SEDUCTION—</b>	
who may prosecute for.....	189
ib.....	190
<b>SEIZIN—</b>	
within five years, when necessary in civil action.....	143
within same time, for defending.....	144
when deemed to exist.....	146
running with occupancy, in what cases.....	148
See POSSESSION OF REALTY.	

SERVICE—	Section.
of summons.....	220
by publication.....	221
the manner of publication.....	222
on joint defendants.....	223
what is proof of.....	224
of copy of complaint and affidavit in injunction.....	311
of notice and papers.....	685
by mail, when.....	686
by deposit in Post Office.....	687
when complete.....	687
upon whom, after appearance.....	688
on non-resident.....	689
by telegraph.....	691
of writ of mandate and prohibition.....	749
of writ of review.....	732
SHARES—	
homestead association, exempt from execution.....	440
SHARES AND INTERESTS—	
seized on execution or attached.....	437
in corporation, subject to seizure.....	322
how levied on or attached.....	323
SHERIFF—	
directed to provide Court room.....	52
proof of service of summons by.....	224
liability of, for escape.....	293
liability, for selling without notice.....	443
liability, on a resale on execution.....	447
to keep party arrested on Justice's process till discharged.....	577
to notify plaintiff of arrest.....	576
to detain person arrested for contempt till discharged.....	835
liability, for arrest of witness.....	981
SIGNATURE—	
definition of.....	13
when admitted.....	599
SINGULAR—	
includes the plural number.....	13
SOLE TRADER—	
who may become.....	885
notice, how given, and what to contain.....	886
petition, what to contain and when filed.....	887
may have five hundred dollars of community or husband's property.....	888
who may oppose it, and how.....	889
trial or hearing.....	890
decree, what it must be.....	891
oath, copy of order to be recorded.....	892
rights and liabilities of.....	893
must maintain her children.....	894
husband of, not liable for debts.....	895

<b>SPECIAL DAMAGES—</b>	Section.
not necessary to be alleged in libel and slander.....	257
<b>SPECIAL PROCEEDINGS—</b>	
what costs allowed in.....	693
against an attorney.....	127
in eminent domain.....	856
for condemnation.....	863
in contest of elections.....	764
what applicable to Justices' and Probate Courts.....	636
in change of venue in Justices' Courts.....	633
<b>STATEMENT—</b>	
of cause of action.....	231
on motion for new trial.....	415
on such motion to contain.....	415
of points in Judge's charge.....	372
on appeal to District Court.....	666
settlement thereof.....	666
when unnecessary.....	667
of findings, etc., bill of exceptions.....	415
<b>STATUTE—</b>	
definition of public and private.....	904
recitals in, how far evidence.....	909
private, pleaded by reference.....	256
with relation to the Code, repealed.....	14
See EVIDENCE; PUBLIC WRITINGS.	
<b>STATUTE OF FRAUDS—See EVIDENCE.</b>	
<b>STATUTE OF LIMITATIONS—</b>	
how pleaded.....	255
<b>STATUTORY PROHIBITION—</b>	
effect of, on statutes of limitation.....	174
<b>STAY OF PROCEEDINGS—</b>	
undertaking on appeal from money judgment.....	645
on appeal for delivery.....	646
on judgment directing execution of conveyance.....	647
in actions concerning realty.....	648
when appeal perfected.....	649
on judgment in other cases .....	652
on appeal to District Court.....	669
in cases of review.....	730
See APPEAL.	
<b>STREET—See HIGHWAYS.</b>	
<b>SUB-CONTRACTORS—</b>	
are all but those contracting with owner.....	816, 824
See LIENS.	
<b>SUBPÆNA—</b>	
for witnesses, definition of.....	941
issued by Justice of Peace or Probate Court .....	630
how to be issued.....	942
how to be served.....	943

SUEPCENA—(Continued).	Section.
how to be served on concealed witness.....	944
witness compelled to attend.....	945
person present compelled to testify.....	946
punished for disobedience.....	947
forfeiture therefor .....	948
warrant may issue for witness, when.....	949
contents of warrant .....	950
if witness prisoner, how brought .....	951
motion for warrant.....	952
imprisoned witness examined .....	953
to witness, before commissioner .....	973
See EVIDENCE.	
SUBSCRIBING WITNESS—	
when called to prove instrument .....	926
how proved on his denial of knowledge.....	927
See EVIDENCE.	
SUBSTANTIAL—	
justice the rule of construction of pleading .....	249
SUBSTITUTION—	
of parties to action .....	200
SUCCESSIVE—	
actions as new causes arise may be prosecuted .....	712
SUCCESSOR—	
of Justice, who is.....	628
in case of dispute, who is .....	629
SUMMONS—	
actions commenced by.....	214
when may issue.....	215
how issued, directed, and what to contain.....	216
alias .....	217
how served and returned.....	219
how served on particular persons.....	220
publication of, may be made.....	221
service in partition.....	492
by publication.....	222
how served by telegraph.....	691
when part only of several defendants are served.....	223
proof of service of, what constitutes.....	224
jurisdiction acquired by.....	225
is part of judgment roll.....	424
provisions not applicable to contempts.....	690
issued by Justices' and Probate Courts .....	555
to issue within one year.....	551
time to appear before Justice's or Probate Court.....	556
alias, may issue.....	557
service of, in Justices' and Probate Courts.....	559
by whom served therein.....	560

<b>SUMMONS—</b> <i>(Continued)</i> .	Section.
hour for appearance.....	561
issuance of, waived.....	552
to juror, in general Sec. 97 to.....	111
in partition.....	491
in forcible entry and detainer.....	804
in eminent domain, what to contain.....	858
how issued and served.....	858
to interpreter.....	901
when to issue, against joint debtors after judgment.....	672
in proceedings against joint debtor.....	673
with what accompanied.....	674
See JUROR; ACTIONS.	
<b>SUBMISSION—</b>	
of controversy without action.....	780
judgment thereon like others.....	781
judgment may be enforced or appealed from, like others.....	782
<b>SUPPLEMENTAL PLEADINGS—</b>	
filing and how served.....	261
must be filed and served.....	262
<b>SUPPLEMENTARY PROCEEDINGS—</b>	
debtor required to answer concerning his property, when.....	460
proceedings to compel debtor to appear.....	461
in what cases he may be arrested.....	461
what bail may be given.....	461
any debtor of the judgment debtor may pay the latter's creditor..	462
examination of debtors of judgment debtor, or of those having property belonging to him.....	463
witnesses required to testify.....	464
Judge may order property to be applied on execution.....	465
proceedings upon claim of another party to property.....	466
denial of indebtedness to judgment debtor.....	466
disobedience of orders, how punished.....	467
applicable to Justices' and Probate Courts.....	616
<b>SUPREME COURT CLERK—</b>	
to certify judgment, etc.....	661
<b>SUPREME COURT—</b>	
jurisdiction of two kinds.....	19
original jurisdiction.....	20
appellate jurisdiction.....	21
may reverse, affirm, or modify.....	22
remittitur.....	22
number of Justices to transact business.....	23
number to pronounce judgment.....	24
terms, when held.....	25
additional terms.....	25
to have seal.....	53

	Section.
<b>SURRENDER OF DEFENDANT—</b>	
by his bail.....	280
bail may' arrest for purpose of.....	281
<b>SUSPENSION—</b>	
of attorney, proceedings for.....	125
proceedings for, by the Court.....	127
<b>SWEAR—</b>	
defined .....	13
<b>SUPREME JUSTICE—</b>	
must not act as attorney .....	61
extent of powers of.....	66
<b>SURETIES—</b>	
action by, for payment of debt by principal.....	715
in all cases to justify on undertakings.....	721
<b>SURPRISE—</b>	
ground for motion for new trial.....	411
relieved by amendment.....	267
<b>TEAMSTER—</b>	
what property of, exempt from execution.....	440
<b>TELEGRAPH—</b>	
service of papers made by.....	691
<b>TENANT—</b>	
cases specified where, guilty of unlawful detainer.....	797
<b>TENDER—</b>	
before suit, effect on costs.....	701
offer equivalent to tender.....	983
payment entitles to receipt.....	984
<b>TERMS OF COURT—</b>	
failure of, does not affect proceedings.....	69
Supreme Court .....	25
District Courts, to continue how long.....	27
<b>TERRITORY—</b>	
people of, not required to give bond.....	722
Officers of and Counties, same.....	722
<b>TESTIFY—</b>	
word defined .....	13
<b>TESTIMONY—</b>	
out of this Territory taken by deposition.....	961
in this Territory.....	962
in partition.....	509
evidence may be perpetuated.....	985
manner of application for order to perpetuate.....	986
notice of time and place to be given.....	987
manner of taking deposition.....	988
deposition to be filed.....	989
when the evidence may be produced.....	990
effect of the deposition.....	991
taken in case of adjournment.....	365



<b>THINGS IN ACTION—</b>	Seet: n.
assignment of, not to prejudice defense.....	183
<b>THIRD PERSON—</b>	
claim of property by, in replevin.....	307
claim of property by, on attachment.....	330
claim of property by, on execution.....	433
property of debtor in hands of.....	463
<b>TIME—</b>	
when this Code takes effect.....	1
how computed.....	8
of performance may be extended.....	719
exception as to notice of appeal.....	719
enlargement of, to plead in discretion of Court.....	267
Courts take judicial notice of measurement of.....	896
<b>TOOLS—</b>	
exempt from execution.....	440
<b>TOWN—</b>	
summons served on.....	220
<b>TRANSCRIPT—</b>	
of judgment is lien from filing.....	428
<b>TRANSFER—</b>	
of interest does not abate action.....	200
on disqualification of Judge.....	211
on order for papers to be transmitted.....	212
of proceedings after judgment, in certain cases.....	213
of motions and orders.....	683
<b>TRESPASS—</b>	
by cutting and carrying away trees.....	473
measure of damages in.....	474
damages may be trebled.....	475
<b>TRIAL—</b>	
order of conduct of proceedings on.....	371
the Court's charge to the jury.....	372
Court must furnish points contained on charge to parties.....	372
party asking special instructions.....	373
jury may view the premises.....	374
charge when jury permitted to separate.....	375
what jury may take with them.....	376
decision or deliberation of jury.....	377
may come into Court for further instructions.....	378
proceedings in case a juror becomes sick.....	379
when prevented from giving verdict, cause may be again tried...	380
while jury are absent, Court may adjourn from time to time.....	381
sealed verdict.....	381
final adjournment discharges jury.....	381
verdict, how declared; form of.....	382
polling the jury.....	382
proceedings when verdict is informal.....	383
what actions at, are contempts.....	830

TRIAL—(Continued).	Section.
in Justices' and Probate Courts, Sec. 590 to .....	599
exceptions may be taken at.....	402
what excepted to of course.....	403
exceptions, form of.....	404
exceptions signed by Judge and filed with Clerk.....	405
exceptions not presented at time of ruling.....	406
exceptions settled upon notice.....	406
exceptions after judgment.....	407
when exceptions refused, application to Supreme Court to prove the same.....	408
proceedings, when Judge ceases to hold office.....	409
testimony to be taken down by the Clerk when.....	716
witness may be excluded from Court-room.....	976
proof in forcible entry and detainer.....	909
testimony taken by deposition, on adjournment.....	365
deposition, when used on .....	967
deposition for use of either party.....	969
certified copy of deposition used.....	990
of attorney.....	135
of rights to property on execution.....	438
against debtor of judgment debtor.....	465
of action against party attached.....	466
of proceedings against joint debtor.....	677
of one on arrest for contempt.....	838
for dissolution of corporation.....	849
for taking private property for public use.....	860
of application of sole trader.....	890
<b>By THE COURT—</b>	
jury, when and how waived.....	389
decision in writing and filed, when.....	390
facts and conclusions to be separately stated.....	391
judgment on.....	391
findings may be waived, how.....	392
proceedings after determination of issue of law.....	393
reference may be ordered.....	393
issues of law first disposed of.....	361
See ISSUES.	
<b>By JURY—</b>	
jury, how drawn.....	366
each party entitled to four peremptory challenges.....	367
grounds of challenge.....	368
challenge, how tried.....	369
jury to be sworn.....	370
may be ordered on mandate and prohibition.....	743
See ISSUES ; JURY ; TRIAL.	
<b>By REFERENCE—</b>	
upon agreement of parties.....	394

<b>TRIAL (BY REFERENCE)—</b> <i>(Continued)</i> .	Section.
when ordered on motion.....	395
number of referees, qualifications, etc.....	396
either party may object ; grounds of objection.....	397
objections, how disposed of.....	398
referees to report within twenty days.....	399
effect of report, how excepted to, etc.....	399
effect of findings.....	400
how excepted to .....	401
in partition.....	497
two of three referees may do what.....	718
See REFERENCE.	
<b>TRUSTEE—</b>	
of express trust to sue without joining beneficiary.....	184
costs in proceedings by or against.....	702
claims against, to be united.....	231
ordered to deposit money in Court.....	347
<b>UNCERTAINTY—</b>	
as a ground for demurrer.....	232
<b>UNDERTAKINGS—</b>	
of plaintiff in claim and delivery.....	300
exception to, and proceedings thereon.....	301
of defendant for redelivery.....	302
justification of sureties.....	303
qualification of sureties.....	304
action upon, on dismissal.....	354
action upon, in a contempt.....	841
action upon, in attachment.....	333
action on release of attachment.....	336
of plaintiff before arrest and bail.....	274
same in Justices' and Probate Courts.....	574
delivery of, by defendant on arrest.....	284
on arrest for contempt.....	837
of plaintiff before injunction.....	313
of plaintiff on attachment.....	320
ib.....	579
by defendant for release of attachment.....	335
ib.....	580
of debtor in supplementary proceedings.....	461
given by receiver.....	344
for continuance in Justices' and Probate Courts.....	589
on appeal to be filed.....	644
ib.....	652
ib.....	663
to be given on appeal to District Court.....	669
justification of sureties.....	669
for costs required of non-resident.....	706
if not given.....	707

<b>UNDERTAKINGS—</b> <i>(Continued)</i> .	<b>Section.</b>
justification of sureties on all.....	721
on appeal, not required of executors.....	663
See BOND.	
<b>UNINTELLIGIBILITY—</b>	
as a ground for demurrer.....	232
<b>UNITED STATES—</b>	
definition of term.....	13
<b>UNMARRIED FEMALE—</b>	
may sue for seduction.....	189
<b>USURPATION OF OFFICE OR FRANCHISE—</b>	
certain writs abolished.....	534
action brought against whom.....	535
person entitled to office to be set forth in complaint.....	536
party usurping may be arrested.....	536
judgment may determine what.....	537
when judgment in favor of applicant.....	538
damages recovered.....	539
rights of several persons determined in one action.....	540
if defendant guilty, what judgment to be rendered.....	541
<b>VACANCY—</b>	
in office of Judge does not affect proceedings.....	69
<b>VACATION—</b> See CHAMBERS.	
<b>VALUE—</b>	
actual, of property to be stated in affidavit in replevin.....	298
jury to determine, of specific personal property, when.....	387
<b>VARIANCE—</b>	
if misled by material, how provided for.....	263
immaterial, disregarded.....	264
a failure is not deemed a variance.....	265
amendments by the Court allowed generally.....	267
party may be sued by fictitious name.....	268
there is no error or defect unless it affects a substantial right.....	269
<b>VENIRE—</b> See JURORS; JURY.	
<b>VENUE—</b> See PLACE OF TRIAL.	
<b>VERDICT—</b>	
when prevented, action may be again tried.....	380
sealed verdict may be directed to be brought in.....	381
how declared.....	382
form of.....	382
jury to be polled.....	382
informal, proceedings thereon.....	383
general and special, defined.....	384
when a general or special, may be rendered.....	385
in actions for recovery of money, or establishing a counter-claim..	386
entry of.....	388
in actions for recovery of specific personal property.....	387
in forcible entry and detainer.....	811

<b>VERDICT—</b> <i>(Continued).</i>	Section.
in actions to quiet title.....	478
in proceedings against debtors.....	677
causes for vacation of.....	411
exceptions to, must specify.....	404
is part of judgment roll.....	424
may be reviewed on appeal.....	659
<b>VERIFICATION—</b>	
when answer to be verified.....	245
how the pleadings are verified.....	245
by affidavit.....	954
genuineness and execution of instrument, when admitted.....	246
genuineness and execution of instrument admitted unless denied under oath.....	247
when genuineness and execution of instrument not admitted.....	248
complaint for an injunction to be verified.....	311
accusation against attorney to be verified.....	129
application for voluntary dissolution to be verified.....	846
<b>WAIVER—</b>	
of summons, what is.....	215
of jury trial, when .....	389
<b>WAGES—</b>	
exempt from execution, what and when.....	439 and 440
<b>WAR—</b>	
removal of Court on account of.....	50
effect of, on limitations.....	172
<b>WARRANT—</b> See CONTEMPT; ARREST AND BAIL.	
<b>WASTE—</b>	
actions for, against guardians, tenants, and others.....	472
restrained during time for redemption.....	456
what is.....	456
to be restrained during foreclosure.....	483
claim of damages for, united in action.....	231
<b>WILLS—</b>	
includes codicil.....	13
jurisdiction of, in Probate Courts.....	31
<b>WITNESSES—</b>	
definition of.....	897
all persons capable of perception and communication may be.....	897
persons who cannot testify.....	898
persons in certain relations to parties, prohibited.....	899
when privileged persons must testify.....	899
Judge or juror may be a witness.....	900
when an interpreter, to be sworn.....	901
Probate Court, may compel to attend.....	31
every Court may compel to attend.....	42
when is compelled to attend.....	945
served with subpoena to attend.....	977

WITNESSES—( <i>Continued</i> ).	Section.
attendance enforced in contesting elections.....	767
protected from arrest, when.....	979
PRODUCTION OF—	
subpoena for, defined.....	941
how subpoena issued.....	942
issued in contested election cases.....	767
how served.....	943
served by telegraph.....	691
served on concealed.....	944
is compelled to attend.....	945
person present to testify.....	946
disobedience punished.....	947
what forfeiture for disobedience.....	948
warrant may issue to bring.....	949
contents of a warrant.....	950
if a prisoner, how brought.....	951
brought on whose motion.....	952
imprisoned, how examined.....	953
RIGHTS AND DUTIES—	
bound to attend when subpoenaed.....	977
must answer questions.....	978
protected from arrest, when.....	979
arrest void, liability for.....	980
affidavit to be made by.....	981
discharged from arrest.....	982
how sworn.....	993
rights, in the form of swearing.....	994
by either oath or affirmation.....	996
TESTIMONY OF—	
in proceedings against debtor of debtor.....	464
examined on trial of challenge.....	369
See EXAMINATION OF WITNESSES; DEPOSITION.	
WORDS—	
the singular includes the plural.....	13
the masculine convertible with feminine.....	13
construed by context.....	12
giving joint authority, how construed.....	11
and terms construed.....	13
WORK—	
must not be done on holidays.....	9
WRIT—	
includes what.....	13
jurisdiction for issuance of.....	20
ib.....	26
ib.....	31
under seal of Court.....	55
what abolished.....	534
served by telegraph.....	691

**WRITINGS—**

Section.

defined.....	13
contents, how proved.....	932
inspection of, demanded.....	679
all persons may inspect and copy public.....	902
custodian of, bound to give copies.....	903
copy, how certified.....	919
altered, who to explain.....	940

**PUBLIC—**

every citizen entitled to inspect and copy.....	902
public officers bound to give copies.....	903
four kinds of.....	905
public and private statutes defined.....	904
books containing laws presumed to be correct.....	906
public seal authenticates a law or document.....	907
other evidence of laws of other States.....	908
recitals in statutes, how far evidence.....	909
judicial record defined.....	910
record, how authenticated as evidence.....	911
record of a foreign country, how authenticated.....	912
oral evidence of a foreign record.....	913
manner of proving other official documents.....	914
public record of private, evidence.....	915
entries in official books primary evidence.....	916
Justices' judgment in other States and Territories, how proved...	917
ib.....	918
contents of other official certificates.....	919
certificates of purchase primary evidence of ownership.....	920
entries made by officers or Boards primary evidence.....	921

**PRIVATE—**

books, maps, etc., how far evidence.....	923
when in possession of adverse party, notice to be given.....	924
called for and inspected may be withheld.....	925
where there is a subscribing witness, the proof.....	926
other witnesses may also testify.....	927
when evidence of execution not necessary.....	928
entries of decedent's evidence in specified cases.....	929
acknowledged and certified.....	930

**INSPECTION OF—**

a party may demand inspection and copy of a book, paper, etc....	679
--	-----

**WRITTEN INSTRUMENT—**

set up in complaint, how controverted.....	246
set out in answer, how controverted.....	247
inspection of, may be demanded.....	679
inspection of, effect of refusal.....	248

**YEAR—**

defined.....	13
--------------	----





# CONTENTS.



# CONTENTS.

---

	PAGE.
An act granting leave of absence to E. T. Beatty, probate judge, of Lemhi county.....	438
An act to amend an act, entitled "An act concerning rights of way, easements and other necessary means for the development of mines," approved January 12, 1877.....	266
An act to repeal an act, entitled "An act to authorize the commissioners of Alturas county to levy and collect a special tax for the purchase of fuel, lights, and stationery," approved January 13, A. D. 1871.....	320
An act to provide for the establishment and maintenance of graded schools in the city of Lewiston.....	408
An act to amend an act entitled "An act to regulate proceedings in criminal cases in the courts of justice in the Territory of Idaho," approved January 14, 1875.....	227
An act authorizing the decisions of the Supreme Court to be published .....	312
An act to establish a code of civil procedure for Idaho Territory.....	1
An act regulating roads, highways and public thoroughfares in Idaho Territory .....	277
An act establishing district courts in each of the organized counties of the Territory, and providing for the expenses thereof.....	256
An act to create and organize the county of Custer.....	340
An act to amend an act entitled "An act concerning county treasurers," approved January 12, 1875.....	250
An act regulating hogs found trespassing in the counties of Ada, Nez Perce, Oneida, Alturas, Bear Lake, Lemhi, and a part of Washington, in the Territory of Idaho.....	434
An act regulating the salary and fees of the probate judge of Shoshone County.....	357
An act creating the office of district attorney for each of the organized counties of Idaho Territory, and defining their duties and compensation.....	250
An act to authorize the transfer of certain moneys to the general fund in Shoshone County, and to cancel the indebtedness of said fund to the school fund of said county.....	358
An act to provide for branch county jails in Alturas County.....	320
An act to provide for stock districts in the county of Bear Lake, Idaho Territory; for creating stock boards for such districts, and for the round up of cattle.....	330

	PAGE
An act to amend an act entitled, "An act to provide a uniform system of Territorial and county revenue, and for the assessing and collecting of the same," approved January 15, 1875.....	290
An act empowering the Governor of this Territory to contract for the publication of a work on the resources of Idaho.....	310
An act to prohibit the keeping of places of resort for smoking opium, or frequenting the same.....	276
An act to amend an act entitled, "An act to incorporate Boise City in Ada County," approved January 11, 1866.....	363
An act to regulate the right to the use of water for mining, agricultural, manufacturing and other purposes.....	267
An act regulating the salary and fees of the probate judge of Owyhee county..	356
An act to better define the eastern boundary of the county of Cassia.....	339
An act to authorize the county commissioners of Alturas county to grant a salary to the probate judge of said county.....	322
An act to amend an act entitled "An act defining the duties and fees of county officers," approved January 13, A. D. 1871.....	248
An act defining the duties of the treasurer of Alturas county.....	322
An act to regulate the manner of collecting Territorial and county revenue in Idaho Territory.....	235
An act to dissolve the bonds of matrimony between Mary Heed, and Albert Heed, her husband.....	439
An act to create the independent school district of Boise City, and to provide for establishing and maintaining a graded public school therein.....	369
An act authorizing the auditor of the county of Alturas to issue new warrants in lieu of certain old ones.....	323
An act supplementary to an act entitled "An act concerning chattel mortgages," approved January 12, 1875.....	307
An act better to secure the purity of elections, and provide for cases of contested elections.....	257
An act to amend the charter of the city of Lewiston.....	384
An act regulating the distribution of water for purposes of irrigation.....	273
An act providing for the erection of a county court house and jail building, at Boise City, the county seat of Ada county.....	314
An act for the relief of Edward McConville.....	438
An act to amend an act entitled "An act to provide a uniform system of Territorial and county revenue, and for the assessing and collecting the same," approved January 15, 1875.....	293
An act to provide for the keeping, discipline and management of the Territorial prisoners.....	303
An act to secure the collection of poll taxes.....	242
An act to provide an additional desk for the office of the clerk of the Supreme Court.....	437
An act to provide for the election of county school superintendents in certain counties of this Territory.....	433
An act relating to the location, and recording of mining claims.....	262
An act fixing the salary of the Probate Judge of Ada county, and providing for the payment of the same.....	318

	PAGE.
An act supplementary to an act entitled "An act to amend the charter of the city of Lewiston," approved February 9, 1881.....	407
An act to repeal the tenth section of an act entitled "An act to regulate marks and brands of stock," approved January 12, 1877.....	436
An act to provide for readjusting and apportioning the representation to the houses of the Legislative Assembly from the counties of Lemhi and Custer, and for other purposes.....	345
An act to continue in force certain provisions of an act entitled "An act regulating salaries and fees, and the collection and disbursement of revenues in Owyhee county," approved January 9, 1877.....	356
An act to amend "An act fixing the salaries of certain officers in Oneida county," approved January 15, 1881.....	353
An act regulating the salaries and fees of certain officers of Alturas county...	326
"An act fixing the salary of the assessor of the county of Nez Perce".....	350
"An act to amend section 56 of an act entitled 'An act to provide a uniform system of Territorial and county revenue, and for the assessing and collecting of the same,' approved January 15, 1875".....	231
"An act to repeal an act entitled an act authorizing and directing the collection of hospital tax in Nez Perce county, approved January 9, 1877, and an act amendatory thereof, approved February 20, 1879,".....	351
An act to create a contingent fund in Shoshone county.....	359
An act to extend the powers of the board of county commissioners of Boise county, relating to road contracts.....	338
An act regulating the salary of certain officers of Washington county.....	361
An act to amend an act entitled "An act to provide for the better maintenance of indigent sick, idiotic, and insane persons in the several counties of this Territory," approved Dec. 13, 1864.....	303
An act to amend "The general school law of Idaho Territory.".....	244
An act fixing the salaries of certain officers in Oneida county.....	352
An act to amend an act, entitled "An act to establish a public school system, and to provide for the maintenance and supervision of public schools," approved February 21, 1879.....	432
An act relating to insurance companies.....	308
An act to protect resident stock owners and ranchers, and provide for the branding and marking of live stock.....	295
An act amending an act relating to district attorneys and defining their duties, approved January 14, 1875.....	255
An act supplementary to an act entitled "An act regulating enclosures and to prevent the trespassing of animals," approved January 10, 1867.....	306
An act entitled "An act to amend an act creating the board of county commissioners and defining their duties and powers," approved January 15, 1875.	247
An act concerning the office of public administrator.....	292
An act to repeal an act entitled "An act to incorporate Franklin City in Oneida county," approved January 10, A. D. 1873.....	383
An act to create a contingent fund in the county of Cassia.....	339
An act to provide for the indigent insane of the Territory of Idaho.....	300
An act defining the duty and power of the county school superintendent of Ada county.....	319

	PAGE
An act to amend an act entitled "An act relating to fences and trespasses in the counties of Nez Perce, Oneida and Idaho." .....	362
An act to provide for the re-location of the county-seat of Alturas county....	325
An act regulating the salary of the probate judge of Custer county.....	347
An act legalizing certain records in Lemhi county.....	349
An act to restrain the herding of sheep in Bear Lake county.....	335
An act to prevent stallions from running at large in Oneida county.....	354
An act to provide for the payment of certain outstanding warrants against the general road fund of Idaho County.....	347
An act fixing the salary of the sheriff and auditor of Washington County....	360
An act to regulate the compensation of the clerk of the board of county commissioners of Nez Perce County.....	351
An act regulating the salary and fees of the probate judge of Idaho County..	348
An act to amend an act entitled "An act to allow valuable stallions kept for breeding purposes to run at large with the bands of their owner or owners," approved February 20, 1879 .....	436
An act to provide for the building of a bridge across Payatte river, at or near Hunt's Ferry, on the Boise and Umatilla stage road.....	422
An act better to define the boundary line between Lemhi and Alturas Counties.....	329
An act to fill vacancies in the board of county commissioners of Lemhi County	349
An act regulating the fees of the Territorial secretary.....	247
An act to dissolve the bonds of matrimony now existing between Martin Fallon, and Mary Fallon, his wife.....	439
An act to dissolve the bonds of matrimony between Alfaretta Stine, and Eugene V. Stine, her husband.....	441
An act to purchase and repair or construct a bridge across Bear River, in Oneida County.....	425
An act requiring butchers and dealers in fresh meat in Shoshone County to pay a license.....	359
An act to authorize the Auditor of Alturas County to issue warrants on the current expense and redemption fund, in lieu of certain old ones drawn upon the road fund.....	328
An act to provide a free bridge across Boise River, near Boise City, in Ada County, and to establish a bridge commission in said county.....	426
An act to amend an act entitled "An act concerning crimes and punishments," approved January 14, 1875.....	229
An act to amend an act entitled "An act in relation to the construction of bridges, ferries, roads and trails," approved December 20, A. D. 1864..	292
An act to amend section 76 of the Revenue Law.....	232
An act creating a contingent fund for the county of Bear Lake, in Idaho Territory.....	336
An act to tax the owners of dogs, in Bear Lake county, Idaho Territory.....	337
An act to dissolve the bonds of matrimony between Jane E. Pollard, and John Pollard, her husband.....	440
An act to exempt officers of fire companies from jury duty.....	309
An Act to dissolve the bonds of matrimony now and heretofore existing between Orlando Robbins, and Malinda Robbins, his wife.....	440

---

An act to amend an act "To protect certain game in Idaho Territory," approved January 12, 1875.....	309
An act to amend section five hundred and thirty-nine of an act entitled "An act to regulate proceedings in criminal cases in the courts of justice in the Territory of Idaho," approved January 14, 1875.....	228
"To provide additional officers for each house of the Legislative Assembly" ..	441
"Appropriating money for a private secretary to His Excellency John B. Neil, Governor of Idaho Territory".....	442
"Appointing committees to investigate the condition of affairs in the offices of the Territorial controller and treasurer".....	442
"To procure postage stamps for the use of the members of the Eleventh Legislative Assembly".....	443
"Calling a meeting for the election of a public printer by both houses of the Legislative Assembly.".....	443
"Providing for a revision of the statute laws of Idaho Territory".....	444
"Appropriating two hundred and fifty dollars per annum to the trustees of the Historical Society of Idaho Pioneers.".....	444
"Relating to the distribution of the session laws of the eleventh session."....	445





**INDEX**  
**TO**  
**LAWS PASSED AT THE ELEVENTH SESSION**  
**OF THE**  
**LEGISLATIVE ASSEMBLY OF THE TERRITORY OF IDAHO.**

12 43

12 43

# INDEX.

## A

<b>ABSENCE—LEAVE OF.</b>	<b>PAGE.</b>
To E. T. Beatty.....	438
<b>ADA COUNTY—ACTS RELATING TO.</b>	
Court-house and jail building.....	314
Probate Judge, salary of.....	318
School Superintendent, duty and power of.....	319
<b>ADMINISTRATOR, PUBLIC.</b>	
Office of.....	292
<b>ALTURAS COUNTY—ACTS RELATING TO.</b>	
fuel lights, etc., special tax for.....	320
branch jails in.....	320
Probate Judge, salary of.....	322
Treasurer, duties of.....	322
Auditor to issue new warrants in lieu of certain old ones.....	323
county seat, re-location of.....	325
certain officers, salaries and fees of.....	326
warrants to issue on the current expense and redemption fund, etc.....	328
boundary between Lemhi and—.....	329
<b>AMENDMENTS—</b>	
<b>BOISE CITY, CHARTER OF, SECTIONS AMENDED.</b>	
<b>SECTIONS.</b>	
3.....	363
4.....	364
5.....	364
<b>BRIDGES, ROADS, FERRIES AND TRAILS.</b>	
6.....	292
<b>CASSIA COUNTY—ACT CREATING AND ORGANIZING.</b>	
1.....	339
<b>COUNTY OFFICERS—DUTIES OF.</b>	
10.....	248
<b>COUNTY COMMISSIONERS—DUTIES AND POWERS OF.</b>	
13.....	247

AMENDMENTS—Continued.

SECTIONS.	PAGE.
COUNTY TREASURERS, DUTIES OF.	
11.....	250
CRIMES AND PUNISHMENTS.	
68.....	229
CRIMINAL PRACTICE ACT.	
339—Subdivision 8.....	227
356.....	227
377.....	227
539.....	228
665.....	228
675.....	228
DISTRICT ATTORNEY.	
1.....	255
DEVELOPMENT OF MINES.	
2.....	266
Fences and Trespasses in certain counties.....	362
GAME LAW.	
1.....	309
INDIGENT SICK AND INSANE.	
1.....	303
LEWISTON.	
Charter of.....	384
ONEIDA COUNTY.	
Salaries of certain officers.....	353
REVENUE LAW.	
1.....	230
56.....	231
76.....	232
77.....	233
SCHOOL LAW, GENERAL.	
8.....	244
17.....	432
18.....	244
21.....	244
42.....	245
43.....	246
44.....	246
STALLIONS, RUNNING AT LARGE.	
1.....	436
ASSESSOR—	
Nez Perce county, salary of.....	350
AUDITOR—	
Alturas county, relating to issuance of new warrants.....	323
Alturas county, warrants on current expense and redemption fund.....	328
Washington county, salary of.....	360

## B

	PAGE
<b>BEAR LAKE COUNTY, ACTS RELATING TO—</b>	
stock districts in.....	330
sheep, to restrain the herding of.....	335
contingent fund for.....	336
dog tax in.....	337
<b>BOISE CITY, ACTS RELATING TO—</b>	
charter of, sections 3, 4, 5, amended.....	363
independent school district of.....	369
<b>BOISE COUNTY, ACTS RELATING TO—</b>	
county commissioners, powers of.....	338
<b>BOUNDARIES—</b>	
Lemhi and Alturas counties, better to define.....	329
Cassia, better to define.....	339
<b>BRIDGES—</b>	
Payette river, in Ada and Washington counties.....	422
Bear river, in Oneida county.....	425
Boise river, in Ada county.....	426
<b>BRIDGES, FERRIES, ROADS AND TRAILS—</b>	
amending Sec. 6.....	292
<b>BUTCHERS—</b>	
Shoshone county, to pay license in.....	359

## C

<b>CASSIA COUNTY, ACTS RELATING TO—</b>	
boundary of.....	339
contingent fund in, creation of.....	339
<b>CHATTEL MORTGAGES—</b>	
supplementary act concerning.....	307
<b>CODE OF CIVIL PROCEDURE.....</b>	1
<b>COUNTY COMMISSIONERS—</b>	
duties and powers, amendment to.....	247
Boise county, powers of.....	338
Lemhi county, to fill vacancies in.....	349
Nez Perce county, compensation of.....	351
<b>COUNTY OFFICERS—</b>	
duties and fees of.....	248
<b>COURTS—</b>	
establishment of in each county.....	256
<b>CRIMES AND PUNISHMENTS—</b>	
amendment to Sec. 68.....	229
<b>CRIMINAL PRACTICE ACT—</b>	
amending Sec. 339, 356, 377, 665, 675.....	227
amending section 539 of.....	228
<b>CUSTER COUNTY, ACTS RELATING TO—</b>	
creation and organization of.....	340
apportioning, representation from.....	345
Probate Judge, salary of.....	347

## D.

PAGE

## DISTRICT ATTORNEY—

creating office of, for each county.....	250
amending Sec. 1.....	255

## DISTRICT COURTS—(See COURTS).

## DIVORCE—

Fallon and Fallon.....	439
Heed and Heed.....	439
Pollard and Pollard.....	440
Robbins and Robbins.....	440
Stine and Stine.....	441

## DOG TAX—

Bear Lake county.....	337
-----------------------	-----

## E

## ELECTIONS—

secure purity of.....	257
school superintendent in certain counties.....	433

## ENCLOSURES—

supplementary to act regulating the same.....	306
---	-----

## F

## FENCES AND TRESPASSES—

Idaho, Nez Perce and Oneida counties, amending act relating to.....	362
---	-----

## FIRE COMPANIES—

exemption of, from jury duty.....	309
-----------------------------------	-----

## FRANKLIN CITY—

incorporation act repealed.....	383
---------------------------------	-----

## G

## GAME LAW—

amending section 1.....	309
-------------------------	-----

## H

## HOGS—

trespassing of, in certain counties.....	434
--	-----

## HOSPITAL TAX—

Nez Perce county, repeal of.....	351
----------------------------------	-----

## I

## IDAHO COUNTY, ACTS RELATING TO—

fences and trespasses in.....	362
road fund, payment of warrants against.....	347
Probate Judge, salary of.....	343

## INDIGENT SICK AND INSANE—

maintenance of, act amending.....	303
-----------------------------------	-----

**INSANE—**

PAGE.

Provisions for..... 300

**INSURANCE COMPANIES—**

licensing of..... 308

**IRRIGATION—**

distribution of water for..... 278

**J****JUDGES, PROBATE—**

Ada county, salary of..... 318

Alturas county, salary of..... 322

Custer county, salary of..... 347

Idaho county, salary of..... 348

Shoshone county, salary of..... 357

Owyhee county, salary of..... 356

**L****LEMHI COUNTY, ACTS RELATING TO—**

apportionment and representation from..... 345

records of, legalized..... 349

county commissioners to fill vacancies in board of..... 349

boundary between Alturas and..... 329

**LEWISTON, CITY OF—**

charter of, amended..... 384

charter of, supplementary to..... 407

graded school in..... 408

**M****McCONVILLE, EDWARD—**

relief of..... 438

**MINES—**

means for development of..... 266

right to use of water for..... 267

location and recording of..... 262

**N****NEZ PERCE COUNTY, ACTS RELATING TO—**

assessor, salary of..... 350

hospital tax, repeal of..... 351

fences and trespasses in..... 362

clerk of board of county commissioners, salary of..... 351

**O****ONEIDA COUNTY, ACTS RELATING TO—**

certain officers, salaries of..... 352

certain officers, salary of, amendments..... 353

	PAGE
ONEIDA COUNTY, ACTS RELATING TO— <i>Continued.</i>	
fences and trespasses in.....	362
stallions, to prevent from running at large in.....	354
OPIUM—	
smoking of, prohibited.....	276
OWYHEE COUNTY, ACTS RELATING TO—	
Probate Judge, salary and fees of.....	356
revenue, salaries and fees in .....	356

P

POLL-TAX—	
collection of.....	242
PRISONERS, TERRITORIAL—	
keeping and management of .....	303

R

REPEALED—	
ALTURAS COUNTY.	
salaries of certain officers.....	326
special tax for fuel, etc.....	320
Boise City charter, amendments to.....	363

CRIMINAL PRACTICE ACT.

SECTIONS.	
193.....	227
194.....	227
195.....	227
196.....	227
197.....	227
198.....	227
199.....	227
200.....	227

FRANKLIN CITY.

incorporation act.....	383
insurance companies, acts relating to.....	308

MINES, DISCOVERY, LOCATION AND RECORDING OF.

an act relating to gold and silver quartz lodes, etc., and an act supplementary thereto.....	262
an act relating to quartz lodes in Owyhee and Alturas counties.....	265
an act relating to gold and silver quartz lodes in Lemhi county, approved January 9, 1877.....	265
an act relating to gold and silver quartz lodes in Lemhi county, approved February 21, 1879.....	265

NEZ PERCE COUNTY.

hospital tax in.....	351
----------------------	-----

SHOSHONE COUNTY.

sinking fund.....	358
-------------------	-----



	PAGE
<b>REPEALED—Continued.</b>	
<b>Stock.</b>	
marks and brands of, app. Jan. 10, 1867.....	300
" " " " " " " 12, 1877.....	300
section 10 .....	436
Territorial prisoners, acts in relation to.....	303
<b>RESOLUTIONS—</b>	
additional attaches, providing for.....	441
Private Secretary for the Governor, provided for.....	442
controller's and treasurer's affairs, investigation of.....	442
postage stamps.....	443
public printer, election of.....	443
statute laws, revision of.....	444
Historical Society of Idaho Pioneers, appropriation to.....	444
session laws, distribution of.....	445
<b>RESOURCES, ETC., OF IDAHO TERRITORY—</b>	
authorizing publication of.....	310
<b>REVENUE, COUNTY AND TERRITORIAL—</b>	
amending Section 1.....	230
" " 56.....	231
" " 76.....	232
" " 77.....	233
collection of.....	235
<b>ROADS, ETC.—</b>	
regulation of.....	277

## S

<b>SCHOOL—</b>	
Lewiston, city of, graded, in.....	408
Boise City, independent district of.....	369
general law, amendments to.....	244
general law, amendments to.....	432
<b>SCHOOL SUPERINTENDENT—</b>	
election of, in certain counties.....	433
Ada county, duty and power of.....	319
<b>SHOSHONE COUNTY, ACTS RELATING TO—</b>	
Probate Judge, salary and fees of.....	357
transfer of certain moneys.....	358
contingent fund, creation of.....	359
butchers in, required to pay license.....	359
<b>SHERIFF—</b>	
Washington county, salary of.....	360
<b>STALLIONS—</b>	
running at large, amendment to act allowing.....	436
Oneida county, to prevent from running at large in.....	354
<b>STOCK DISTRICTS—</b>	
Bear Lake county.....	330

	PAGE
STOCK—	
marks and brands of, Sec. 10 of act relating to, repealed.....	436
branding, marking and protection of owners of.....	295
SUPREME COURT—	
decisions, publication of.....	312
desk for office of clerk of.....	457

T

TERRITORIAL SECRETARY—	
fees of.....	247
TREASURERS—	
county, duties of, Sec. 11, amended.....	250
Alturas county, duties of.....	322

W

WASHINGTON COUNTY, ACTS RELATING TO—	
Auditor and Sheriff, salaries of.....	360
certain officers, salary of.....	361
WATER—	
right to use of, for mining, agricultural, manufacturing, and other purposes .....	267
distribution of, for irrigation.....	273









